



# Update

Working Together for Families and Children

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • DECEMBER 2000 • VOLUME 1, NUMBER 4

## Editor's Note

### WELCOME

to the December 2000 Beyond the Bench issue of *Update*, the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.

**We invite your queries, comments, articles, and news.**

Direct correspondence to  
Beth Kassiola, Editor,  
at the e-mail address below.



**Center for Families,  
Children & the Courts**

### Update

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## State Office Seeks to Serve the Needs of Foster Youth

*Karen Grace-Kaho  
Foster Care Ombudsman*

**T**he California State Office of the Foster Care Ombudsman, a valuable new resource for foster youth and children, has a statewide toll-free number: 877-846-1602. The number was established so that staff could take complaints and provide referrals and information to both children in foster care and concerned adults calling on children's behalf.

Established by California Senate Bill 933, the Foster Care Ombudsman program is an autonomous entity within the California Department of Social Services. Its purpose is to provide children who are placed in foster care,

either voluntarily or pursuant to Welfare and Institutions Code section 300 and sections 600 and following, with a means to resolve issues related to their care, placement, and services. Foster children and youth have been advocating for the creation of such an office for years.

The California Youth Connection (CYC), a group of current and former foster youth, was instrumental in establishing the Office of the Foster Care Ombudsman. The former foster youth in CYC have reported that many foster children are hesitant to make formal com-

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## CFCC Director's Corner

*by Diane*

### NUMBERS, NUMBERS, NUMBERS: THE JUDICIAL COUNCIL HAS BEEN COUNTING FOR 74 YEARS

Between 1900 and 1930 California's population increased from 1,485,053 to 5,677,251. During this period of rapid growth, California became the leading oil-producing state in the nation. In the 1920s the Los Angeles area became an important center in both the U.S. aircraft and motion picture industries. Many highways were built throughout California in the 1920s, providing greater mobility, and in 1924 the first airmail letters were flown from San Francisco to New York.

In 1925 Calvin Coolidge was the President of the United States, Friend Richardson was the Governor of California, and Louis W. Myers was the Chief Justice of the California Supreme Court. On January 5, 1925, the California Legislature, at its 46th regular session, voted to submit to the people of California a proposal to amend the California Constitution by adding to article XI a new section relating to the judicial branch. The Judicial Council of California was created through the adoption of this constitutional amendment, approved by the voters on November 2, 1926. The amendment specified the composition of the Judicial Council and provided that the council was, among other things, to survey the condition of business in the courts with a view toward simplifying and improving the administration of justice. The council was also required to make recommendations to the courts, the Governor, and the Legislature.

At its first meeting on December 10, 1926, the Judicial Council, according to the *First Report of the Judicial Council of California*, decided to survey the condition of business in the superior courts. For its first report, the council sought to

collect and report on court data from July 1, 1925, to December 31, 1926 (it also reported data for the 1925–1926 fiscal year). At the outset, the council attempted to collect information in three case categories: (1) criminal; (2) ordinary civil, probate, guardianship, and juvenile; and (3) divorce, annulment, and maintenance. A series of questionnaires was sent to each state trial judge.

During the fiscal year ending June 30, 1926, more than 21,900 complaints for divorce and maintenance were instituted (see the chart on pages 3–4 for statewide statistics). The counties that contributed most of this litigation were Los Angeles (9,169), San Francisco (4,197), and Alameda (2,043). *(For comparison, in fiscal year 1998–1999 there were more than 156,527 family law filings statewide: Los Angeles (36,738), San Diego (14,969), and Orange (12,312) Counties had the most filings.)* There were 11,823 juvenile court filings, including adoptions, for fiscal year 1925–1926. Again, Los Angeles (5,277), San Francisco (2,845), and Alameda (703) Counties had the most. *(For comparison, there were 100,518 juvenile delinquency filings and 41,892 dependency filings<sup>1</sup> for fiscal year 1998–1999. The counties with the most delinquency filings were Los Angeles (26,215), Orange (6,953), and San Diego (5,197), while the counties with the most dependency filings were Los Angeles (14,119), San Bernardino (3,217), and Riverside (2,813).)* During this same time period, approximately 21,000 probate and guardianship proceedings were filed, with the most in Los Angeles (6,984), San Francisco (2,904), and Alameda (2,138) Counties.

When we examine the filings for 1925–1926 and 1998–1999, are we comparing apples to apples, apples to oranges, or possibly Fuji apples to Delicious? We do not know. We do know that if we compare filings to overall population for the same time periods, we see some interesting percentages. The population of California was approximately 4,552,056 in 1926 and 34,036,000 in July 1999. If we compare these filings to overall population, we get the following filing rates: 0.48 percent for divorce, annulment, and maintenance in 1925–1926 and 0.46 percent for 1998–1999 family law proceedings; 0.46 percent for 1925–1926 probate and guardianship and 0.01 percent for 1998–1999 probate and guardianship; and 0.26 percent for 1925–1926 juvenile and adoption and 0.30 percent for 1998–1999 juvenile delinquency or 0.42 percent for 1998–1999 juvenile delinquency and dependency combined.

Although these are interesting numbers, there is a lot that we do not know. For example, these figures seem to reveal that the filing rate for divorces has remained approximately the same. But what are the respective marriage rates? Are fewer people getting married today? If so, the divorce rate may be higher today. What proportion of the filings for the two time periods includes filings for family law proceedings other than divorce?

There appears to have been a distinct drop in filings in probate and guardianship proceedings. Since child abuse laws were not enacted until the second half of the 20th century, were there more guardianships of children in 1926? Are there fewer probate filings with the increased use of trusts? With an aging population, why don't we see an increase in probate conservatorships?

Finally, is there really an increase in juvenile filings? That depends on many factors. Should we compare the 1925–1926 filings only to 1998–1999 delinquency filings? If so, there may have been a slight increase. However, that determination again depends on addi-

tional information. In 1926 the jurisdiction of the juvenile court applied to any person under the age of 21; today, jurisdiction ends at 18 in most instances. Does this mean that the rate is potentially higher? What was the population of the potential pool of youthful offenders (adolescents and young adults) at these times?

According to the juvenile court law in 1926, children could come under the jurisdiction of the juvenile court if they were found to have no parent or guardian willing to exercise or capable of exercising proper parental control, or whose homes were deemed unfit by reason of neglect, cruelty, or depravity. These children were classified as wards in the

same manner as youthful offenders. However, not until the 1960s was there recognition of the “battered child syndrome.” And better methods of diagnosing child abuse and neglect were established by that time. Therefore, the actual number of abused and neglected children who were under juvenile court jurisdiction in 1926 may have been relatively small.

Since the council was established, record and data collection has been a priority. Accurate judicial data collection is critical for assessing trends and measuring the courts’ business statewide. Cases involving children and families are becoming more complex for the courts to resolve. Courts increasingly

are being asked to resolve cases involving issues of significant family dysfunction, including family violence, substance abuse, mental illness, and disabilities related to an aging population. To effectively serve the children and families who come before the court and to be accountable to the public that funds our court system, we must continually strive to collect accurate and meaningful data.

1. Legislation establishing a new classification of “dependent child” became effective in 1961. Dependency filings in California were not reported as a separate category until 1967–1968.

### Numbers, Numbers, Numbers: A Comparison of Population and Court Filings for 1925–1926 and 1998–1999

	1926 Estimated Population	July 1999 Estimated Population	1925–1926 Divorce & Annulment	1998–1999 Total Family Law (Marital)	1925–1926 Juvenile & Adoption	1998–1999 Juvenile Delinquency	1998–1999 Juvenile Dependency	1925–1926 Probate & Guardianship	1998–1999 Probate & Guardianship
<b>CALIFORNIA</b>	<b>4,552,056</b>	<b>34,036,000</b>	<b>21,917</b>	<b>156,527</b>	<b>11,823</b>	<b>100,518</b>	<b>41,892</b>	<b>20,935</b>	<b>50,446</b>
ALAMEDA	409,530	1,448,700	2,043	5,936	703	3,154	1,167	2,138	2,938
ALPINE	242	1,170	i	5	i	16	2	i	4
AMADOR	8,144	33,650	5	215	2	136	27	33	81
BUTTE	6,096	200,600	99	1,253	26	1,248	443	175	590
CALAVERAS	9,774	38,350	13	210	4	80	64	43	110
COLUSA	66,249	18,750	17	73	7	118	12	65	51
CONTRA COSTA	3,749	932,000	267	4,472	80	1,244	1,221	248	1,470
DEL NORTE	7,376	27,450	22	176	2	286	82	25	71
EL DORADO	136,579	152,400	20	855	6	513	96	53	279
FRESNO	11,394	794,200	504	3,988	271	3,875	1,152	483	1,169
GLENN	40,323	26,900	26	93	3	82	31	49	36
HUMBOLDT	52,178	126,100	145	835	45	267	97	199	434
IMPERIAL	6,793	145,600	150	477	28	634	310	83	139
INYO	68,707	18,050	5	272	6	196	23	47	45
KERN	23,708	651,700	316	3,317	145	2,412	1,128	190	756
KINGS	6,284	127,300	62	666	17	478	85	80	151
LAKE	10,701	55,400	15	341	3	338	74	52	181
LASSEN	10,548	33,350	45	179	7	274	73	39	74
LOS ANGELES	1,572,474	9,790,000	9,169	36,738	5,277	26,215	14,119	6,984	12,498
MADERA	17,164	116,600	9	610	10	1,364	483	64	165
MARIN	34,495	246,700	70	1,089	35	800	92	153	514
MARIPOSA	3,004	15,900	5	121	i	123	25	12	24

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**Numbers, Numbers, Numbers: A Comparison of Population and Court Filings for 1925-1926 and 1998-1999**

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MENDOCINO	23,811	86,500	82	458	21	720	255	143	244
MERCED	30,664	207,000	70	945	33	1,345	172	97	352
MODOC	6,732	9,575	13	70	i	35	29	32	49
MONO	1,160	10,800	1	51	i	42	4	5	26
MONTEREY	40,843	390,900	106	1,669	28	1,212	138	143	539
NAPA	21,788	124,200	46	606	20	331	59	152	280
NEVADA	10,723	90,500	22	516	80	289	44	66	220
ORANGE	90,025	2,813,700	293	12,312	173	6,953	2,395	547	2,038
PLACER	21,526	232,000	54	1,568	15	1,030	575	113	438
PLUMAS	6,797	20,200	14	101	3	177	22	47	54
RIVERSIDE	65,661	1,504,100	i	7,681	115	4,535	2,813	245	2,282
SACRAMENTO	116,514	1,202,100	610	7,906	152	3,931	1,999	516	1,642
SAN BENITO	10,153	49,700	i	296	5	150	5	139	75
SAN BERNARDINO	103,651	1,674,700	359	8,638	254	5,090	3,217	368	1,811
SAN DIEGO	160,954	2,883,500	847	14,969	503	5,197	2,733	725	3,988
SAN FRANCISCO	570,535	797,200	4,197	3,206	2,845	1,574	966	2,904	2,880
SAN JOAQUIN	91,423	562,600	314	2,789	157	2,060	620	393	1,298
SAN LUIS OBISPO	25,753	240,500	59	1,514	20	598	194	128	424
SAN MATEO	57,093	727,300	190	2,832	72	4,341	436	300	1,279
SANTA BARBARA	53,132	408,600	161	1,731	134	2,146	174	230	729
SANTA CLARA	122,897	1,717,600	419	7,624	192	3,004	1,284	590	2,480
SANTA CRUZ	31,851	253,400	135	1,161	17	744	222	176	471
SHASTA	13,644	165,000	55	1,093	19	1,110	274	72	401
SIERRA	2,103	3,180	3	16	i	19	i	8	8
SISKIYOU	22,013	43,750	75	281	19	202	23	108	140
SOLANO	40,718	394,300	98	2,184	14	1,263	168	138	627
SONOMA	57,156	447,300	149	2,246	76	1,933	169	322	848
STANISLAUS	50,099	439,800	148	2,236	67	1,512	241	200	549
SUTTER	12,367	77,700	19	638	8	248	136	54	160
TEHAMA	13,374	55,300	33	372	4	352	62	95	161
TRINITY	2,680	13,050	4	i	i	i	i	21	i
TULARE	68,237	365,400	108	1,825	115	2,053	810	214	508
TUOLUMNE	8,520	52,800	19	298	3	143	48	84	130
VENTURA	41,850	751,600	124	3,649	29	1,697	407	164	1,161
YOLO	20,375	158,900	34	688	9	302	191	101	249
YUBA	10,853	60,000	52	437	16	327	201	80	125

i = Incomplete data.

# Pilot Project to Develop Best Practices for Child and Family Assessments

*John A. Sweeney, CFCC Staff Attorney*

A statewide "best practice" protocol for assessment of children and families involved with California's juvenile justice system is close to becoming a reality in six California counties.

The purpose of the Best Practices Child and Family Assessment Protocol Pilot Project is to improve the care and well-being of children by (1) helping families to strengthen themselves and provide safe, stable environments for their children; (2) building resources to keep families together whenever possible; (3) promoting each family's ability to make good decisions together; (4) exploring and promoting the placement of children with relatives; and (5) increasing safety, stability, and permanency for children and families.

As envisioned, the adoption of a new best practice assessment of children and families will require a fundamental shift in the way services are designed and delivered to families and children who receive child welfare services. The hallmark of the new approach would be a shift in focus from a professionally centered to a family-centered assessment protocol, emphasizing an individual family's strengths and needs.

Moving the Best Practices Child and Family Assessment Protocol Pilot Project from a legislative vision to implementation at the county level required a great deal of time and effort.

In December 1998 Best Practice Guidelines were issued by the California Department of Social Services (CDSS). The purpose of the CDSS guidelines was to describe how a new assessment protocol could be implemented at the practice, program, and system levels in each county. Welfare and Institutions Code section 16501.2, which was added by Senate Bill 933 in 1998, made CDSS responsible for implementing the Best Practices Child and Family Assessment Protocol Pilot Project.

Paul Landman, Cecilia Fisher-Dahms, and Bill Lamb of CDSS's Child Welfare Services Bureau were assigned the job of coordinating the implementation of the project. The first task CDSS tackled was to assemble an advisory group that would meet on a quarterly basis. The group comprises parent partners (recent beneficiaries of child welfare services) and staff from various state and county agencies, including Education, Health Services, Drug and Alcohol, Mental Health, Developmental Services, Social Services, Juvenile Probation, and the Judicial Council's Center for Families, Children & the Courts. The advisory group is responsible for recommending statewide strategies for implementing the best practices project and collecting data for a report to be submitted to the Legislature in 2003. Based on the results of the pilot project, the advisory group is also expected to

develop a formal assessment protocol for children receiving foster care and child welfare services, in collaboration with stakeholders and state and county agencies.

CDSS issued an all-counties letter in September 1999 to request that interested counties participate in this unfunded pilot. Counties from across the state, both urban and rural, responded to the invitation. Committing to share their best practices that are now working to improve outcomes for their children and families were Humboldt in the north, Santa Clara and Marin in the Bay Area, Merced from the central valley, and Santa Barbara and San Luis Obispo from the central coast.

This group of counties formed the core of the design team, which meets monthly. The University of California at Davis provided meeting facilitator Cliva Mee of the Resource Center for Family Focused Practice to facilitate this process. The design team's primary responsibility is to design the pilot project, developing assessment protocol with an eye to promoting collaborative efforts among the community, the families, and the various agencies.

Todd Sosna of Animated Consult in Santa Barbara and Curt Acredolo of the Human and Community Development Department at the University of California at Davis are responsible for providing an independent assessment of the pilot. The input of the evaluators has been invaluable in creating a chain of logic and in clarifying issues, goals, and barriers faced by the project in each county. A Web site has been established for the evaluation at <http://trc.ucdavis.edu/cacredolo/bp/>.

Each county has identified current programs into which the Best Practice Guidelines would be integrated. Hum-



Design team members listen intently to Foster Parent Advocate Brian Nunn of Humboldt County.

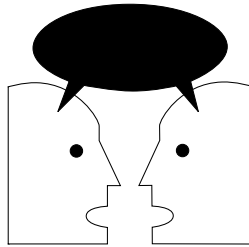
*Photo: John A. Sweeney*

*Continued on page 6*

## DOMESTIC VIOLENCE RESTRAINING ORDER FORMS TO BE TRANSLATED INTO SPANISH, VIETNAMESE, KOREAN, AND CHINESE

The Judicial Council of California is publishing translations of widely used domestic violence restraining order forms in the following languages: Spanish, Vietnamese, Korean, and Chinese. Funding for the project was provided by the Department of Health Services. Please look for the forms in your local courthouse in January 2001.

As part of a comprehensive effort to provide multilingual information about the restraining order process, the council will also publish a variety of materials to support the translated forms. Multi-



lingual informational pamphlets and posters for display in courthouses will be available by next summer. In addition, the video for petitioners seeking restraining orders, which is already available in Spanish, will be available in Korean and Vietnamese.

Further information will be provided in the next issue of this newsletter, and all materials will be distributed to courts and community agencies next year. For more information, please contact Tamara Abrams at [tamara.abrams@jud.ca.gov](mailto:tamara.abrams@jud.ca.gov).

### PILOT PROJECT

*Continued from page 5*



Paul Landman and Bill Lamb of CDSS's Child Welfare Services Bureau and Cliva Mee of the University of California at Davis, Resource Center for Family Focused Practice, facilitated the design team meeting on November 2, 2000. Photo: John A. Sweeney

boldt and Santa Clara Counties identified their wraparound programs, which provide services to a family in order to maintain a child in the home. Santa Clara County also identified its Family Conferencing and Shelter Comprehensive Assessment Program. Marin County

identified its emergency response protocol. In Santa Barbara County, a parent mentoring program and family conferencing are the focus. San Luis Obispo County identified its school-based social work program, and Merced County's Placement Council has revised its Level of Care Assessment form to more accurately identify the strengths of the child and family in order to meet their needs.

This is an exciting project with far-reaching consequences. The goal is a child and family assessment protocol that will contribute to greater safety, stability, and permanence of families; that is user-friendly; and that is owned, used, and valued by all agencies. Please look for the best practices informational table during Beyond the Bench XII at the Universal City Sheraton, December 6-8, 2000.



**Diane Nunn**  
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**Isolina Ricci**  
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## Serving Needs of Foster Youth

*Continued from page 1*

plaints to county social services departments because they fear consequences such as being moved to a worse placement, alienating their social workers, or simply not being believed.

The Office of the Foster Care Ombudsman is mandated to disseminate information regarding the services it provides and the rights of children and youth in foster care. Additionally, the office staff must conduct objective investigations, attempt to resolve complaints, compile all data collected during each year, and provide an annual report to the Legislature.

A letter dated August 25, 2000, was sent to all county welfare directors, county probation officers, California public adoption agencies, California group homes, and California foster family agencies, informing them of the services and purpose of the Office of the Foster Care Ombudsman. This letter also informed them that county social workers are required to provide foster children with information about the office and its toll-free number.

The Office of the Foster Care Ombudsman can obtain any record of a state or local agency regarding a complaint and can meet with any foster child in his or her placement or elsewhere. The office established advisory committees for the department's regional offices. These committees have assisted the Ombudsman staff in the development of protocols and procedures and have provided input concerning the development of brochures, a database, and related issues.

Karen Grace-Kaho was appointed Ombudsman for Foster Care in February 2000 and has since set up offices in Sacramento and Los Angeles. The staff members in both offices have a wide range of experience and expertise. They include social workers, former Community Care Licensing staff, a former residential treatment facility director, former county ombudsmen, and—most importantly—former foster youth. The latter staff members bring firsthand

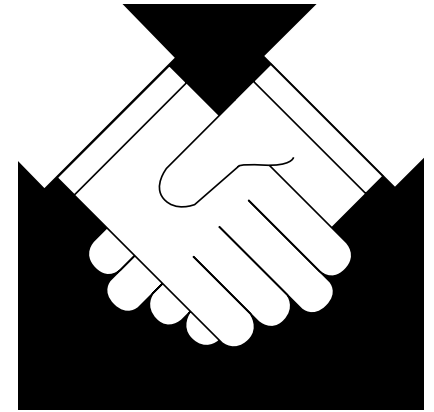
knowledge about the problems and realities of the foster care system. They share their experiences, which include living in high-level group homes, being labeled and medicated, being separated from siblings, feeling as if no one really cares for them, and becoming homeless upon their emancipation. Currently, these staff members are attending college with plans to become social workers, attorneys, and authors.

The Foster Care Ombudsman program has been involved in outreach toward foster youth groups and all organizations and departments that have contact with foster youth. Across the state, the office has conducted foster youth focus groups in which foster youth shared their concerns with the foster care system. Some of the issues that foster youth have raised are the trauma of multiple placements, the need to be placed with their siblings and to maintain contact with their families, and the damaging effect of being labeled “disturbed” or “delinquent.” During these focus groups, the office presented the foster youth with information about their rights.

The office has created a foster youth rights flier that covers such topics as the importance of foster youth attending their court hearings and utilizing their appointed attorneys, the right of foster youth to go on their court-ordered visits with family, and the right to be able to contact their social workers, probation officers, attorneys, and Court Appointed Special Advocates (CASAs).

The office has received complaints about the foster care system from a wide variety of sources, including social workers, attorneys, probation officers, CASAs, foster parents, biological parents, and foster family agencies as well as foster youth. The Office of the Foster Care Ombudsman can also provide information and contacts so that other agencies and departments can refer foster youth to appropriate services.

An important aspect of the office is to promote collaborations between different departments and agencies to



resolve complaints. For example, many foster youth and foster parents have cited unrealistic licensing regulations for older foster youth as being barriers to successful emancipation. Foster youth and providers felt that regulations such as the prohibitions against older youths being alone in the home and against having access to kitchen cooking utensils and personal hygiene products (e.g., aerosol deodorants and razors) were inappropriate for many youth. The office has facilitated meetings with participants from Community Care Licensing, children and family services departments, California Youth Connection, group home providers, and foster parents to address these issues.

The Office of the Foster Care Ombudsman looks forward to working with professionals in the judicial system and to hearing their concerns. Office staff members are available for presentations to any interested group. Please let the Office of the Foster Care Ombudsman know how we can assist you as we work together to make sure that the foster children of California are given the care and services they need to have successful lives.

*Karen Grace-Kaho is California's Ombudsman for Foster Care. She was previously the foster care ombudsman in Santa Clara County. Ms. Grace-Kaho has a wealth of experience working with courts, child advocates, community agencies, and others in the foster care and child welfare areas.*

# Santa Clara County Family Court: A Protocol For Change

*Hon. Jack Komar, Presiding Judge, Superior Court of Santa Clara County*

The following press release of January 31, 2000, was taken verbatim from Santa Clara County's Web site at <http://www.sccsuperiorcourt.org/press/famcrtprotchg.html>.

## BACKGROUND

Family Court is one of the busiest and most significant divisions of the court. For many people, their only contact with the court system may be Family Court. The issues involved in Family Court include custody of children, child support, domestic violence, spousal support, and the division of property. Over two thirds (2/3) of the litigants in the Family Court represent themselves in court.

In January, 1999, as Presiding Judge of the Superior Court, I formed a committee, Chaired by Judge Mary Ann Grilli, later Co-Chaired by Judge Read Ambler, comprised of judges, commissioners and lawyers, to review the Family Court, its operations, rules and procedures to determine whether there should be systemic changes. That committee, along with its three subcommittees in the areas of custody, rules and procedures, and self represented parties, met frequently over the past year. In addition, members of the committee, with the assistance and participation of Dr. Susan Hanks, from the Administrative Office of the Courts, held confidential public input sessions over a six-day period. The committee has provided me with a great deal of factual information and has made a number of recommendations for changes.

After considering all of the recommendations and information presented, the following changes in the Family

Court Division of the Superior Court either have been or will be implemented as soon as possible:

## 1. ADDITIONAL JUDICIAL AND STAFF RESOURCES

Additional judicial officers will be added to the Family Court Division. A fifth full time judicial officer will be added when the court is at full strength (retirements will leave the court short six judicial officers as of December 31, 1999 and eight short as of March 7, 2000) and when we have space for an additional full time direct calendar judge. As an interim measure, an additional judge, Judge Thomas Cain, will hear the Civil Harassment/Workplace Violence and Domestic Violence/No Minors calendars, which are heard on Fridays, commencing January 21, 2000. Initially, these calendars will remain at Park Center Plaza, but the Civil Harassment/Workplace Violence calendars will eventually be heard in the Civil Division, once appropriate staff are designated and trained for these calendars. This will provide more time to the Family Court judges for matters on their direct calendar caseload.

In addition, Judge LaDoris Cordell will hear some long cause (more than one day) custody/visitation matters and Judge Leslie Nichols will hear some long cause property and support matters. A new long cause protocol will be prepared for the court's use.

Additional court staff will be assigned to the Family Court to relieve some of the burdens, which have been caused by short staffing in the division.

## 2. EXPANSION OF ADR AND BAR ASSOCIATION PARTICIPATION

The Court will work with the Santa Clara County Bar Association and other legal associations and entities to expand the Judge Pro Tempore programs at the Family Court. Currently, members of the bar provide assistance on a daily basis to the Family Law Division, in settlement conferences, mediations, and arbitrations. With the assistance of the bar association, the court will attempt to create an Early Neutral Evaluation program with volunteer attorneys assisting the parties in evaluating the issues in their cases. The Court is encouraging grant applications by Legal Aid, Community Legal Services, and other agencies to assist lower income parties who have matters in the Family Law Division of the court. The court will also seek increased funding to add lawyer facilitators to assist the parties in resolving their cases at an early stage in the litigation.

## 3. EARLY CASE MANAGEMENT AND CASE PROCESSING

The Family Court is committed to managing its cases at the earliest opportunity in order to assist in the resolution of cases in a timely, efficient, and less costly manner. Currently, Case Management Conferences are held only after the filing of an At Issue Memorandum, indicating that a case is ready to set for trial. The Family Court will establish a differential case management pilot project. Every case in which a Response is filed or an appearance is made on a Law and Motion matter (other than a motion to modify) will have a Case Management Conference within 60 days of the filing of the Response or first appearance by the responding party. The court will consider management issues involving cases where no response is filed.

Parties will be encouraged to accomplish service of process within 60 days of the filing of the Petition or Complaint.

Under current rules, all initial child and spousal support matters are to be set on the Law and Motion calendars

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within 30 days. Effective January 10, 2000, all custody and visitation matters, including modification motions, will be set within 30 days, absent the request of a party for a later date for good cause. Once a fifth judge is in place, all Law and Motion matters will be calendared within 30–45 days, absent good cause requests for longer settings. After the first continuance of a Law and Motion matter, which should not exceed 30 days, continuances will only be granted for good cause.

Trial dates will be set within a reasonable time, depending upon the nature of the case and the discovery to be conducted. Trial dates will be continued only for good cause. Failure to complete discovery in and of itself is not to be considered good cause for a continuance, but the reasons discovery has not been completed may constitute good cause. Custody cases have statutory preference and every effort will be made to expedite the completion of those cases.

The court will develop a written protocol setting forth standards for the implementation of the above and Local Rules consistent with the protocol will be prepared for adoption by the court.

### 4. FAMILY COURT SERVICES/ CUSTODY PROCESS

#### A. SCREENINGS

Effective January 4, 2000, emergency screenings will be available five days per week through Family Court Services. In the past, emergency screenings had been available only four days per week and Friday screenings were not available. By definition, emergency screenings involve emergencies, which are urgent issues affecting minor children. In order to better serve the children and parties involved in custody and visitation disputes, screenings will now be available on Friday mornings, in addition to the other four days of the week.

#### B. WAIT FOR ASSESSMENTS

All reasonable efforts will be made by the Court to shorten the wait for an appointment at Family Court Services for an Assessment. Eight months ago, the wait for an assessment appointment was approximately 20 weeks. Currently, the wait is under 5 weeks. The court is committed to further reducing the wait.

#### C. ORGANIZATIONAL AUDIT

The Court will employ an outside consultant/auditor to audit and evaluate the entirety of operations of Family Court Services to assure that it is functioning fairly and efficiently.

#### D. PARENT EDUCATION

A Parent Education program will be developed and implemented for parents involved in custody or visitation matters in the Family Court.

#### E. OUTSIDE CUSTODY EVALUATORS/ASSESSORS

The court from time to time appoints private mental health professionals in the community to perform custody evaluations and assessments and to report to the court in writing and occasionally to testify. The court will maintain a list of qualified outside mental health evaluators, with appropriate specialties, who may be appointed in Family Law matters. Any qualified mental health professional who meets the standards established by the court may be placed on the court's list and appointed in particular cases. The Court will ensure that each such evaluator is qualified to perform such evaluations, in accordance with state and national standards for conducting custody evaluations. Evaluators will be appointed from the list based upon the professional's specialties but also taking into consideration some reasonable rotation so that all approved evaluators will have an equal opportunity to assist the court. The Court will undertake, in conjunction with other agencies, to provide training in custody evaluations, the ethical obligations inherent in custody evaluations, conflicts of interest, rules regarding ex

parte communication, and as well as statewide standards and rules of court. Custody evaluators and assessors will be under an obligation of full disclosure to the court and the parties regarding prior relationships and/or other factors constituting a conflict. No evaluator will be permitted to act as a therapist or perform any other role for any of the parties or their attorneys.

Absent a stipulation between the parties, the appointment of a custody evaluator/assessor will only be made following a hearing at which the parties will be given an opportunity to object to the referral for evaluation/assessment and the identity of the evaluator. By stipulation, such appointments may be made at Early Resolution Conferences.

#### F. TIME FOR COMPLETION OF EVALUATION/ASSESSMENT

All custody evaluations or assessments shall be completed within 60 days of the filing of the order appointing the assessor/evaluator. The Court may extend the time for good cause shown.

### 5. SPECIAL MASTER APPOINTMENTS

Special Masters for custody and visitation issues will not be encouraged by the court. In recent years, Special Masters have been appointed by parties and counsel to essentially act as private judges for issues relating to custody and visitation. These Special Masters have been both mental health professionals and attorneys. Special Masters have been appointed by the parties in many high conflict cases pursuant to such written stipulations between the parties and many of these cases have benefited from such stipulations by providing the parties with a quick and efficient resolution of custody and visitation issues. However, there have also been significant difficulties with the Special Master process and the underlying authority for the appointments has been misunderstood.

The law is reasonably clear that the court has a non-delegable duty to make

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appropriate orders for child custody and visitation. References for custody and visitation are not authorized under Code of Civil Procedure § 639. References under Section 639 are authorized only for factual determinations, such as the taking of an accounting.

On the other hand, the parties, by mutual agreement, may elect under Section 638 of the Code of Civil Procedure to enter into a non-reviewable reference to submit whatever issues they desire to submit to such referees. The decisions of the referees as to all property issues are final and generally can become part of the court's judgment without judicial review. While property issues may justify a binding reference under Section 638, a reference of custody and visitation issues is problematic. The Court has a responsibility to independently decide all custody and visitation issues and neither contract between the parties nor a Special Master or Referee can control the Court's decision in that regard. Accordingly, with regard to custody and visitation issues, if there is an objection to a proposed order by a referee or special master who has been designated by the parties pursuant to Code of Civil Procedure Section 638, the court is prohibited from giving effect to the order without making an independent determination following a de novo hearing during which the court must take evidence, and make a decision based upon the best interests of the child or children. The Court may not, under those circumstances, merely review the Special Master's decision and make a decision based on arguments of counsel or the parties because that would be an improper delegation of its responsibilities.

Thus, if the parties in the future wish to stipulate to the appointment of a Special Master or referee, such a reference will be deemed to be under Section 638 of the Code of Civil Procedure and the parties must be advised that, under

most circumstances, the decisions of the Special Master are not subject to review by the Court, but that if custody or visitation issues are involved, such orders of the Special Master are not binding on the court if either party chooses to request a de novo hearing. Such a stipulation does not require approval by the court, but nevertheless the court may intervene if it determines that such an appointment or order thereunder is not in the best interests of the child. The court will develop a protocol for ensuring that parties who enter into such a stipulation will be fully advised of the consequences of such a stipulation.

Any pre-existing Special Master stipulation relating to custody or visitation heretofore signed by the parties and approved by the court which required court approval or confirmation of orders made by the Special Master will be

reviewed upon the application of any party to the stipulation. It is in the best interests of the children who may be the subject of such stipulations that the courts review with concerned parties whether the stipulation is serving the best interests of the children involved.

Local Rules will be amended in accordance with the above.

## **6. ATTORNEYS FOR CHILDREN**

The court will develop a protocol for appointment of attorneys for children in Family Court. In accordance with state rules and standards, the protocol will include educational and other qualifications of attorneys to be appointed. The court will encourage as many attorneys as possible to obtain the necessary qualifications for appointment as children's attorneys and a flexible rotational system will be developed to allow more qualified attorneys to participate.

Attorneys for children will be appointed after hearings where the parties have been given the opportunity to state any objections they may have to such an appointment, as well as any concerns that they may have regarding the cost of such an appointment. The Court may

schedule a periodic review of the continued need for a child's attorney.

The payment process for attorneys for children will be reviewed and revised.

## **7. SUPERVISED VISITATION**

The court will encourage the establishment of a supervised visitation supervisor by the County of Santa Clara, in conjunction with the enforcement powers of the District Attorney's Office or other appropriate agency. In accordance with state rules and standards, ethical standards for supervised visitation monitors will be established, in order to ensure that any such supervisor is unbiased and does not have an allegiance to either party.

Supervised visitation orders, absent an knowing stipulation, will be made only after a hearing at which the parties may present evidence concerning the reasonable necessity of such orders. Absent good cause, such orders will not be for an indeterminate period, but shall have either termination dates or periodic review dates. The court will consider the economic circumstances of the parties in making orders for supervised visitation, in order to make every effort to assure that parents are not deprived of contact with their children due to a lack of funds. The Court will continue to endeavor to locate additional funding to subsidize supervised visitation for low-income parties.

## **8. FAMILY COURT FACILITIES**

Family Court facilities are inadequate for the functions it presently performs. The court is embarking on a quest for additional space. This process requires the participation of the County of Santa Clara, because the county is the provider of court facilities. The county has indicated a willingness to assist the court in this regard. It is the intent of the court to move the Family Court Commissioners from the main building and add a fifth direct calendar judge to the existing facility. A facility is sought in which to place the commissioners, along with

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other ancillary services, including administrative, clerical, conference rooms, and the like. It is desired that such space be adjacent to the existing family court building or that a new site be obtained for the entirety of family court operations, so that such operations can be in a single building.

The court is contemporaneously planning a twenty courtroom facility which, when completed, will contain all family court operations, as well as juvenile dependency courtrooms, and other uses. That building is probably five years from completion and, in the meantime, the court will continue to rely on leased space.

While in the existing space, signs at the Family Court facility will be updated to provide a more dignified appearance and shall, in addition to English, where reasonable, be in languages reflecting the population which uses the facility.

### **9. INTERPRETERS**

The court is seeking several grants, which will provide for interpreter services at the family court. This has previously been a non-mandated service that the court has not had statutory authorization to fund. This clearly represents a serious need from both the court's and litigant's standpoint.

### **10. SELF REPRESENTED PARTIES**

#### *A. FAMILY COURT CLINIC EXPANSION*

The Family Court Clinic will be expanded when space is available. The Court will seek the assistance of the bar association and other attorneys to provide pro bono services in the clinic or courthouse.

#### *B. FAMILY COURT INFORMATION CENTER*

The Court will establish a self service center that will make available information to self represented parties to enable them to have a better ability to participate in the court's processes, so that each will have a better understanding of the applicable law, and the rules

of court. It is also the intent of the court to make forms available for use of self represented parties. The information and the forms will be available through the court's website, as well as at the court facility. The initial furnishings for the Information Center should be arriving in the first quarter of 2000. The self service center will ultimately encompass probate, juvenile, traffic, small claims, family, civil, and criminal areas of the court.

### **11. COURT ADMINISTRATION**

Court administration will assign a single manager to have administrative authority over all clerical, administrative, and professional staff and employees of the court. All complaints about clerical and administrative functions will be ultimately directed to this manager, who will consult with the Supervising Judge of the Family Court and the Presiding Judge of the Court. Administration will endeavor to assign bilingual staff to family court as much as possible.

### **12. ONGOING EVALUATION**

The Court will continue to evaluate the services it provides to the users of Family Court and make such additional changes as are required. It will also continue to seek information from those who use the courts and the public in general.

### **13. JUDICIAL ASSIGNMENTS**

Judges will be encouraged to accept Family Court assignments for a minimum period of two years. All assigned judges will be expected to complete appropriate educational courses to qualify them to sit as family court judges. The Court will continue its educational programs for judicial officers assigned to the family court, along with programs for staff at the court.

# The Special Immigrant Juvenile Status Statute and the Violence Against Women Act

## IMMIGRATION RELIEF FOR UNDOCUMENTED ABUSED IMMIGRANT CHILDREN\*

Martha Chavarin-Romero, J.D., Immigration Legal Resource Center

Children removed from the home and placed in the care and custody of the state are among the most vulnerable in our society. Abused, neglected, and/or abandoned immigrant children are often-times at even greater risk. Undocumented abused immigrant children face not only the tremendous anxiety and uncertainty experienced by any abused child, but also the terrifying threat of arrest, detention, and deportation. Furthermore, upon release from juvenile court jurisdiction, undocumented minors are unable to obtain lawful employment and/or attend college and are precluded from making a successful transition into mainstream society.

For that reason, in 1990 the U.S. Congress created Special Immigrant Juvenile Status (SIJS), which allows immigrant children who are dependent upon a juvenile court in the United States to obtain lawful permanent resident status, or a "green card."<sup>1</sup> In order to qualify, an unmarried child under the age of 21 must meet the following requirements. First, the child must be declared dependent on a juvenile court in the United States or legally committed to, or placed under the custody of, an agency or department of a state. Second, the child must be "deemed eligible for long-term foster care, due to abuse, neglect or abandonment." As interpreted by the U.S. Immigration and Naturalization Service (INS), this requires that a court find that family reunification is no longer a viable option. Finally, the juvenile court must find that it is not in the child's best interest to be returned to the home country. A child who meets these requirements and is not inadmissible under the immigration laws qualifies for lawful permanent residence.

In certain circumstances, however, SIJS relief is not easily obtainable. For instance, abused children in INS's actual or constructive custody must obtain INS's con-

sent before a juvenile court can exert jurisdiction.<sup>2</sup> If a juvenile court issues a dependency order before INS has consented to the juvenile court's jurisdiction, the order is considered invalid.<sup>3</sup> Moreover, even children who meet all of the SIJS requirements and submit a timely application are at risk of being denied. Often, an INS delay in the adjudication of an SIJS petition results in the child's "aging out" of the dependency system and thereby losing SIJS eligibility.<sup>4</sup> It also appears that in many cases INS has erroneously denied SIJS applicants due to their misapplication of law.

Children who have been battered or subjected to extreme cruelty but do not qualify for SIJS relief may nonetheless gain lawful permanent residence if they meet the requirements of the Violence Against Women Act (VAWA).<sup>5</sup> In order to qualify, an unmarried child under the age of 21 must demonstrate that she or he has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident parent with whom she or he resided.<sup>6</sup> In addition, the child must be living in the United States at the time of filing the VAWA application.<sup>7</sup> However, this requirement does not apply if the abuser is an employee of the U.S. Government, is a member of the uniformed services, or has subjected the child to battery or extreme cruelty in the United States.<sup>8</sup> Finally, the child must prove good moral character.<sup>9</sup>

Together, SIJS and VAWA relief provide critical protection to an extremely vulnerable group of children. Children's attorneys and social workers perform an invaluable service by identifying these children and beginning the legal process as soon as possible. Otherwise, procedural hurdles and/or impending age may forever preclude these children from obtaining lawful permanent residence.

The Immigrant Legal Resource Center provides free information and technical

assistance on SIJS and VAWA relief for children. Contact the "attorney of the day" line at 415-255-9499 ext. 6263 or aod@ilrc.org. For information or technical assistance on VAWA relief for battered spouses, contact the National Immigration Project of the National Lawyers Guild at 617-227-9727 or nip@igc.org.

*Martha Chavarin-Romero is a staff attorney with the Immigrant Legal Resource Center, a national legal back-up center with expertise in laws affecting immigrant children. She specializes in relief for abused, undocumented children under the Special Immigrant Juvenile Status statute and the Violence Against Women Act.*

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1. 8 U.S.C. 1101(a)(27)(J), INA 101(a)(27)(J).

2. U.S. Department of Justice, Immigration and Naturalization Service, *Memorandum for Regional Directors, Special Immigrant Juveniles—Memorandum #2: Clarification of Interim Field Guidance*, July 9, 1999, p. 2, interpreting INA 101(a)(27)(J).

3. *Id.*

4. In many states, children "age out" of the dependency system on their 18th birthdays.

5. Violence Against Women Act of 1994, Pub. L. 103-322 (Sep. 13, 1994), 108 Stat. 1902-1955, 8 U.S.C. §§ 1151, 1154, 1186a note, 1254, 2245.

6. 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (a)(1)(B)(iii), as amended by the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (Oct. 28, 2000).

7. *Id.*

8. *Id.*

9. *Id.* Good moral character is presumed for children under the age of 14.

# Advocating for Our Clients at School

## AN INTERDISCIPLINARY APPROACH

*Abigail Trillin, J.D., and Leslie W. Zeitler, M.S.W.*

**E**ffective advocacy for children at school requires an interdisciplinary approach. It is critical that advocates have a clinical perspective on what is affecting their clients at school and restricting their ability to succeed. It is important that advocates try to work collaboratively with school staff, many of whom are overwhelmed and frustrated but eager to find solutions for students. It is also critical that advocates be aware of the laws that protect students in school and be prepared to invoke those laws to ensure the best possible education for their clients.

Because dependents often have not had consistent advocates, they are among the students whose legal rights at school are most likely to be ignored. With most public schools being overcrowded and overwhelmed, students who do not have someone “pushing” for them are likely to fall through the cracks. For that reason, it is extremely important that the attorneys, social workers, Court Appointed Special Advocates (CASAs), and others involved with dependents become strong advocates for them at school.

This article has two parts: a social work perspective on school advocacy by Leslie W. Zeitler, M.S.W., and a review of pertinent legal issues by Abigail Trillin, J.D.

### A SOCIAL WORK PERSPECTIVE ON SCHOOL ADVOCACY

The school setting is an integral part of our clients’ lives. Because they spend at least one-third of each day at school, this setting has the potential to make a tremendous impact on them. Many children and youth who have unstable or unsafe home lives see school as their safe place—where they can learn, grow,

and see themselves in a positive light. How we advocate for them in the school setting is as important as how we advocate for them in court: Both kinds of advocacy have significant outcomes in our young clients’ lives.

First, our advocacy should focus on developing positive and constructive relationships with the school staff. Developing a rapport with school staff is essential for the best interest of our young clients. It is easy to become adversarial with staff members who appear to be extremely frustrated with and possibly insensitive to our clients. If we are antagonistic with school staff members, they may unwittingly transfer those intense feelings to our clients, resulting in further problems.

Second, our advocacy should include a recognition that at least two parties are involved in any conflict, and that our minor clients may come into a conflict not yet realizing how they may have contributed to problems at school.

When minor clients are facing school suspension or expulsion as a result of their behaviors, it is important to consider several possibilities.

**1. The school setting is actually a safe place for the client.** For some children, a foster home is not a safe place in which to live. Frequently, it is too uncomfortable for children or youth to verbalize what is happening in the home, and “acting out” is the only way they know to get the attention of an adult who can help. Speaking with a mental health professional can help get to the root of a problem.

**2. A peer or school staff member is being (or has been) physically or verbally inappropriate with the client.** If school starts to feel like an unsafe setting, some children may attempt to provoke peers or staff. Modeling of ap-

propriate and consistent limit-setting by school staff is important for dependent children with a history of abuse who may have had only one model of interacting with others. Due to earlier life experiences, a dependent child may have special sensitivities to a particular adult’s style of limit-setting and may respond with negative emotions or responses. Again, a mental health professional can help identify whether this is an issue for a particular client.

**3. The client is embarrassed about not understanding the subject matter or falling behind his or her classmates.** Many dependent minors have changed schools numerous times and, understandably, may fall behind in their schoolwork. Additionally, for minor clients who are in special education classes and are attempting to “catch up” more than one or two grade levels, it can be doubly embarrassing to fall behind one’s peers in school.

**4. The client is in emotional pain or is struggling with larger issues, such as any of the following:**

- ◆ Handling feelings related to surviving physical, sexual, or emotional abuse;
- ◆ Feeling guilty for having disclosed anything about abuse or neglect—that is, for disrupting the status quo in their home of origin;
- ◆ Attempting to manage feelings of fear, sadness, or grief due to (1) loss of one’s home of origin (even if the child experienced abuse, it was still family), (2) loss of a parent through death or drug abuse, or (3) adjustment to a new home that feels strange and uncomfortable for a long time;
- ◆ Feeling singled out or extremely different from other kids because he or she is in foster care; or

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◆ Feeling singled out or different not only because he or she is in foster care but also because of a lack of support or sensitivity from others in regard to any one (or more) of the following:

- The client identifies as lesbian, gay, bisexual, transgender, queer, or questioning;
- The ethnic or racial identity with which the client identifies is no longer mirrored in his or her foster home, neighborhood, or school;
- The client is struggling with English as a second language and would like to maintain his or her primary language in addition to learning English;
- The client has a physical, cognitive, or emotional disability;
- The client has a different spiritual or belief system from his or her foster family.

## RECOMMENDATIONS

**1. Meet with school staff to (1) talk about their concerns and (2) develop a constructive working relationship.** If school staff members are frustrated with your client(s), the following strategy is helpful:

- ◆ Acknowledge the school staff members' frustration.
- ◆ Identify common ground—assisting children and youth in being successful at school.
- ◆ Determine whether the staff is willing to participate in a meeting with you, the client, and other involved adults to work out the issues.

**2. Meet with your minor client to find out how he or she views the problems at school.** After presenting the school's (and your own) concerns, determine whether or not your client is able to reflect on how his or her own behavior may have contributed to the problems. If cognitive or emotional disturbances do not prevent your client's involvement in the process, ask the client if he or she would be willing to participate in a meeting with school staff to work out

the problems. *Note: Lack of client involvement in this process increases the risk of the client's continued behavioral problems, as the client (1) will not have the opportunity to see how many people care and are actively involved and (2) will not have as much opportunity to take ownership of his or her part in the process of behavioral change.*

**3. Create a collaboration: Meet together with the client, other advocates (caregiver, child welfare worker, mental health provider, mentor, tutor, etc.), and school staff to develop a written plan that serves the client's special needs.** Each person involved—including your client—should know his or her specific responsibilities (and goal dates) as part of the plan.

**4. Include a mental health professional familiar with dependent children's issues as part of the advocacy team for every client experiencing behavioral problems at school.** If your client is in therapy, the therapist may be in a particularly strategic position to assist in client advocacy. If your client is not in therapy, encourage your client to participate in counseling. (Many of our young clients believe that only "crazy people" go to counseling. This, however, is clearly a myth, and we explain this to our clients. Long-term counseling can provide tremendous support to dependent children with special needs and complicated feelings.)

**5. Encourage your client to receive a full medical evaluation.** This can help identify potential medical or health issues that could be interfering with the client's learning process.

**6. Encourage your client to receive a full educational assessment.** This can help elucidate client strengths as well as areas of concern to be addressed.

## LEGAL ISSUES

Among the many areas of school law, the two that have the greatest impacts on our clients on a daily basis are special education and school discipline. The following is a very abbreviated

overview of basic student rights in these two areas, along with some warning signs that should let you know that there are problems in the school's handling of situations and how advocates can address those issues.

## SCHOOL DISCIPLINE

All students have a right to a free public school education. Therefore, students cannot have any of that education taken away from them without due process. Even when students are facing only a short suspension from school, they have the right to an informal conference in which they are told why they are being suspended and given the chance to tell their side of the story. In addition, a parent or guardian must be informed immediately of a suspension and has the right to come to school to discuss or contest the suspension. (For dependent children, this can be a problem if there is no consistent caretaker. It is very appropriate for social workers, CASAs, or attorneys to attend these meetings.)

If a student is being recommended for expulsion—which means a period during which he or she may not attend any of the regular district schools—the student is entitled to a full hearing with a right to examine all documents, bring witnesses and evidence, cross-examine all district witnesses, and subpoena witnesses. Expulsion decisions must be made by the school board, although the board can appoint an administrative panel to conduct the evidentiary hearing.

There are limitations on suspensions and expulsions. A student can be suspended for only 5 days at a time (unless he or she is being recommended for expulsion) and for a total of 20 days in the school year. In addition, the law directs schools to examine alternatives to suspension by requiring that students not be suspended on a first offense unless the act is very serious or they cause a threat. Students cannot be expelled unless they commit one of the "zero-tolerance" offenses (weapon possession, drug sales, brandishing a knife,

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and sexual assault) or the school board finds that other means of correction are not feasible or have repeatedly failed or that the student is causing a threat to physical safety.

An advocate should be concerned if the school is not making attempts to try alternatives to exclusion from school and if the client has missed multiple days of school because of suspensions. Multiple suspensions could mean that the school has exceeded its 20-day limit. It may also mean that the student has a special need that is not being adequately addressed (see below).

The advocate should also pay attention to whether the client is being sent home from school “informally” without a suspension. This is illegal and means that the student misses the same amount of class time without any due process and without the day counting toward the 20-day limit.

It is very important to meet with school officials, advocate for alternatives to suspension, and—if it appears that your client’s behavior in school may be caused by unaddressed special needs—request testing. If a client is facing an expulsion hearing, he or she should be represented by an attorney or other advocate. Legal Services for Children has a guidebook for representing students in those hearings.

## SPECIAL EDUCATION

Each student with special needs has the right to a specific, specialized program to meet those needs. The student has a right to be assessed for special education upon written request. A student who qualifies for special education has the right to an Individualized Education Program (IEP), a detailed document that describes how the school will meet the student’s special needs. An IEP for a student who is being assessed for the first time must take place within 50 days of the signing of the consent for assessments by the parent, guardian, or surro-

gate parent. The process of developing the IEP must be a collaborative process in which those involved with the student give input regarding his or her strengths, weaknesses, and learning styles and the most appropriate educational program. The parent, guardian, or educational surrogate must be in agreement with the IEP for it to be implemented. If there is a disagreement about the IEP, the matter can go to a hearing.

Students have the right to receive special education services in the “least restrictive environment” possible, which means they should be educated with the general education population to the maximum extent possible while getting their educational needs met. Students also have the right to related services, including mental health services, to help them benefit from their educational programs. A student who is experiencing serious behavioral problems has the right to a positive behavior intervention plan. A student receiving special education services has special protection with regard to school discipline and cannot be expelled if his or her behavior was caused by the disability or by an inappropriate placement. The IEP meeting in which the IEP team decides whether the disability is connected to the incident is called a manifestation determination.

An advocate should be concerned if the client is having serious problems being successful in school and has never been assessed. The advocate should ensure that the IEP is a collaborative process and that an appropriate individualized plan is created for the student—not just a placement in a program that happens to have space. The advocate should closely monitor the student’s progress, ensure that he or she is being successful in the current placement, and, if not, ask for a new IEP. It is very important to look for the intersection between school discipline and special education and make sure that students who are having behavioral problems are assessed, so that their special needs are met and not used as a reason for excluding them from school.



Any disagreement over an IEP (including a manifestation determination or a determination of whether a student is eligible for special education) can be brought to a due process hearing in front of a state hearing officer. If a school district is not following what the IEP says or is not following any one of the required procedures or timelines, a compliance complaint can be filed with the state Department of Special Education. If the school district is not fulfilling its legal obligations to a dependent child, the district can be joined in the dependency action.

The Community Alliance for Special Education in San Francisco and Protection and Advocacy produce an excellent special education manual titled *Special Education Rights and Responsibilities*.

*Abigail Trillin is a staff attorney at Legal Services for Children (LSC) in San Francisco. Ms. Trillin coordinates LSC’s Education Project, which represents children in school-related cases such as suspension/expulsion and special education matters. Prior to attending law school, Ms. Trillin taught elementary school in Los Angeles.*

*Leslie Zeitler is a social worker at Legal Services for Children, providing consultation, short-term counseling, case management, advocacy, and other services to children and youth. Ms. Zeitler also coordinates LSC’s Conflict Resolution and Youth Support Project. The project provides nonviolent communication skills and conflict management strategies to youth experiencing conflict at home or at school.*

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# Access to Visitation Grantees for 2000–2001

*Shelly Danridge, CFCC Staff Analyst  
Acting Access to Visitation Coordinator*

Congratulations to the 14 superior courts of California that were awarded federal grant funds for 2000–2001 Access to Visitation Grant programs administered by the Judicial Council's Administrative Office of the Courts, Center for Families, Children & the Courts (CFCC). California's Access to Visitation Grant program is currently beginning its fourth year of operation.

In 1996 the federal government passed the Personal Responsibility and Work Opportunity Reconciliation Act ("welfare reform"), Title III, Subtitle I—Enhancing Responsibility and Opportunity for Nonresidential Parents, section 469B of the Social Security Act (Pub. L. 104-193, 110 Stat. 2258), which required the federal government to make grant funds available to states to establish and administer programs to support and facilitate child visitation and access. These programs include mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup), and development of guidelines for visitation and alternative arrangements. Funding to all states for noncustodial access and visitation programs is based on the number of single-parent households. California has the largest number of single heads of households in the United States, and therefore receives the largest portion of federal funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement.

The overall goals of the Access to Visitation Grant program are to increase nonresidential parents' access to their children, to improve the quality of

parent-child relationships, and to expand the scope and availability of support services to families with children who have been or are now in family courts. Subject to the availability of federal funding, the family law division of the superior court for each county may establish and administer programs for education about protecting children during family disruption, group counseling for parents and children, and supervised visitation and neutral drop-off and exchange services.<sup>1</sup>

For fiscal year 2000–2001, 16 proposals, representing 33 counties, were received through the request for proposals (RFP) bid process. The review criteria for the RFPs are governed by statute.<sup>2</sup> Following extensive review (discussions and considerations) and evaluation, the Judicial Council's Family and Juvenile Law Advisory Committee and Executive and Planning Committee approved allocation of funding to the following superior courts.

## **SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA**

### **Program Abstract**

The Responsive Supervised Visitation Program (RSVP) will provide, on a sliding scale, supervised visitation and exchanges in a neutral, professionally monitored facility to families not currently being served because of limited financial resources or language barriers. This program also aims to: provide low-income parents with educational and group counseling to improve their co-parenting skills, in order to enhance compliance with court orders and reduce conflict between parents; develop diversity sensitivity in supervisors meeting the need for visitation; and broaden

options for visitation by increasing the quality and quantity of supervision available. The project will train professional and nonprofessional supervisors in the community in order to increase the number providing services.

## **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

### **Program Abstract**

Fresno County will coordinate with Comprehensive Youth Services (CYS), a 501(c)(3) nonprofit organization already providing supervised visitation and exchange services, to increase the number of paid supervised exchanges (currently 310) and supervised visits (440) by 50 percent. A marriage and family counselor/mediator will be hired to develop educational and counseling programs. Classes for parents will focus on anger management, communication skills, parenting styles, stepparenting, and compliance with custody and visitation orders. Children will be given information on identifying emotions such as fear, anger, and loneliness and how to share and handle them; on communication and problem solving; on coping with family changes; and on anger management.

## **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

### **Program Abstract**

The Safe Access and Friendly Exchanges for Kids (SAFE for Kids) program seeks to give children safe, continuing access to their noncustodial parents by providing on-site, low-fee, supervised visitation and neutral exchange locations throughout Los Angeles County. The pro-

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## Access to Visitation Grants

*Continued from page 17*

gram provides child monitor training as well as child abuse and domestic violence training.

Specifically, SAFE for Kids (1) offers a comprehensive training program to agencies, (2) has five agency sites providing supervised visitation and exchanges, (3) coordinates with domestic violence shelters to establish policies and practices for safe and appropriate contact between children and noncustodial parents who have been affected by domestic violence, and (4) provides a professional and high standard of service for separating and divorcing families that will support children's need for contact with both parents in a safe and child-friendly environment.

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### SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

#### Program Abstract

The North Coast Family Access and Opportunities Program will provide parent education, supervised visitation, and neutral exchange services to clients in Mendocino, Humboldt, and Del Norte Counties who are referred from the superior court or family mediation, regardless of their ability to pay. The Parenting Apart workshop serves parents who are mandated by the court to attend because of divorce, separation, custody, or visitation issues. The curriculum is designed to help parents understand the impact of family transitions and parental conflict on children, the associated grief processes, how to talk to children about divorce, the developmental stages of children during family transitions, and how parents can help their children cope and recognize when children need professional help.

In all three counties, supervised visitation and neutral drop-off and exchange services are offered to children and their parents through a community-based network. An outreach effort will ensure that parents and children who are in need of these services will receive referrals

by the courts, attorneys, schools, social workers, and the therapeutic community.

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### SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

#### Program Abstract

The goal of Merced County is for all families to have equal access to their children. To that end, the Superior Court of Merced County will contract with Child Advocates of Merced County (a 501(c)(3) nonprofit organization) to utilize that agency's Children's Access to Parents (CAP) program to provide supervised visitation and exchange. Parents are referred by the court and enter into a contract with CAP, which conducts supervised visitation and exchange. All visits and exchanges are observed and documented by program employees who are proficient in the language being spoken during the visit and who stay with the participant children at all times.

Additionally, CAP will provide group counseling for children going through the court process (ages four and up) and their families. The focus will be on helping children adapt to their situations and teaching them coping skills. The program will provide supervised visitation or exchange to six families each day, six days per week. Services are offered on a sliding scale (\$0–\$20), based on individual income.

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### SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

#### Program Abstract

The Superior Court of Orange County will establish a special quality assurance unit, Supervised Visitation Services (SVS), which will implement the Judicial Council's Uniform Standards of Practice for Supervised Visitation and will provide training, screening, management, and administration of visitation supervisors. Administration of the SVS unit will include the development of a differential screening process for professional and nonprofessional providers that includes record checks, fin-

gerprinting, and restraining order checks. All providers will be given the appropriate training to ensure compliance with the uniform standards. A pool of trained and qualified monitors will be ready for referrals from the court.

Since a high percentage of the cases involve domestic violence restraining orders, the court's Domestic Violence Prevention Services Project and the SVS unit will work together to monitor progress and status of compliance. The court will send parents to SVS. Intake will include an orientation to the program and a financial needs assessment. A subsidy program will encourage visitation by low-income parents.

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### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

#### Program Abstract

The Superior Court of Sacramento County has created a program to respond to the needs of children caught in the middle of divorce, domestic violence, and other high-conflict family circumstances. This program makes affordable supervised visitation programs available in each of the five participating counties: Sacramento, Placer, San Joaquin, Solano, and Yolo. It establishes safe exchange sites for high-conflict families. The specific goals are to (1) promote continuous access of noncustodial parents to their children; (2) reduce the emotional trauma to children caught in the middle of divorce, domestic violence, and other high-conflict family circumstances; (3) eliminate the risk of abuse or abduction for children who spend unsupervised time with a parent who has a history of violence or abuse; (4) improve compliance with court orders; and (5) assist family courts in resolving visitation and custody disputes.

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## Access to Visitation Grants

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### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

#### Program Abstract

The Parents and Children Together Safely (PACTS) program is an outgrowth of a cooperative plan between the courts, the private nonprofit sector, and San Bernardino County governmental programs. The goals of the program are to (1) increase the accessibility of non-residential parents to their children by providing a center where parents can visit their children under the supervision of trained staff and a trained security officer; (2) enhance the emotional and physical safety of parents and children by providing a monitored, neutral exchange location where children can be transferred from one family member to another for visitation; (3) offer a parent education course and group counseling specifically for substance-abusing parents; (4) provide a group counseling component for children involved in highly conflicted custody cases; and (5) provide a network of services offered by agencies within the community.

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

#### Program Abstract

The Responsible Involved Co-parent Program (RICP) is a collaborative effort by the Superior Court of San Diego, Family Court Services, Kids' Turn, the City of San Diego, and the Real Solutions Center for Children. The Superior Court of San Diego County will administer the grant. The program's goals are to provide opportunities for parents who are family court litigants (separating, divorcing, or nonmarried) to learn responsible parenting and to facilitate greater access of noncustodial parents to their children. RICP includes Kids' Turn workshops (parent education and counseling and a simultaneous program for children) and a supervised visitation

and safe exchange program through the Real Solutions Center for Children.

### SAN FRANCISCO UNIFIED FAMILY COURT

#### Program Abstract

The San Francisco Unified Family Court (SFUFC) has formed the Family Cohesion Collaborative with the Rally Project of Saint Francis Memorial Hospital in San Francisco and with Napa Access Services of Napa Family Court. The collaborative provides court-ordered supervised visitation and neutral site visitation exchange in situations where the parents' relationship has moderate to high volatility or risk of conflict. SFUFC is the applicant agency and fiscal agent responsible for reimbursing the partners for grant activities, collecting pertinent data, assembling necessary reports, and coordinating regular collaborative meetings. SFUFC handles all family court, dependency, and probate matters of the superior court. The Rally Project and Napa Access are responsible for providing supervised visitation and neutral site visitation exchanges for San Francisco County (and adjacent areas) and Napa County, respectively.

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

#### Program Abstract

The Parental Access Program Alliance (PAPA) aims to increase parents' sense of responsibility to their children and compliance with the law. Programs and services will be provided in Santa Barbara, Ventura, and San Luis Obispo Counties and will focus on three areas: affordable supervised visitation services, including training nonprofessional monitors and interactive group counseling for parents with continued high conflict or family violence; a Spanish-language mandatory parent education program; and a parent education program to assist parents who are unrepresented by attorneys in obtaining visitation orders for access to their children. Services are available to both divorcing and never-married parents. Bilingual supervisors are available.

A sliding fee scale is used to determine the hourly rate that the supervised parent will pay for the services; services are provided at no charge to individuals whose only income is derived from public benefits or who fall at or below the federal poverty level.

For high-conflict parents, counseling is provided through the Co-Parenting Essentials Program and the Co-Custody Parenting Program. The Family Court Services Domestic Violence Program is for parents who have a child custody matter before the court and have experienced family violence. The parent and child training is provided in Spanish and English. County family law facilitators provide the program called "How to Obtain or Modify Custody and Visitation Orders."

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

#### Program Abstract

Family courts and nonprofit social service agencies in five counties—Santa Clara, San Mateo, Santa Cruz, Monterey, and San Benito—are collaborating to achieve the following goals: increase children's access to their non-custodial parents and the parents' sense of responsibility for the welfare of their children; reduce the trauma to children caused by family dissolution and conflict; and improve the quality of parent-child relationships. The specific goals are prioritized as follows: removal of cost as a barrier to child access by providing subsidies to low-income and indigent families; provision of visits and neutral exchanges at convenient locations and times; identification and, when possible, implementation of a continuum of integrated services with common standards of practice throughout the five counties; and development of certification and training programs to ensure high standards of practice.

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## Access to Visitation Grants

*Continued from page 19*

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SHASTA

#### Program Abstract

The United Parent Access Program (UPAP) is a collaborative effort by family courts in four counties (Shasta, Tehama, Trinity, and Siskiyou) and several agencies in the region to meet the needs of nonresidential parents. Program services include (1) Cooperating as Separated Parents, a 12-week parents' training program in effective communication and taking personal responsibility, offered in all four counties; (2) Kids' Turn, a successful six-session group counseling program for children of divorced and separated parents that will be expanded to serve an additional 320 families and to offer at least one program in each county; (3) supervised visitation programs in three counties, administered by existing nonprofit organizations; (4) safe exchange programs at two locations in Tehama County; and (5) a part-time project director to coordinate and oversee the agencies, training, publicity, data collection, evaluation, and overall implementation.

UPAP is designed to allow nonresidential parents to spend more time with their children and to provide opportunities for those parents to enhance their sense of parental responsibility toward their children. It provides these services in a cost-effective manner and employs no-cost, low-cost, and sliding fee scales. Furthermore, by providing initial training of people from existing community agencies and local therapists, UPAP increases the probability that the programs can be sustained after the grant period.

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

#### Program Abstract

The Superior Court of Sonoma County will contract for supervised visitation services with the California Parenting Institute (CPI) to provide visitation and exchange services in cases involving flight or security risks or in which the needs of infants and small children can be best met in an enclosed facility. CPI will also refer clients to its own parent education programs or to other community resources. Sonoma Legal Services Foundation will provide supervised visitation and neutral monitoring of exchanges in community settings or in homes and center sites. The goals of the program are to help families make the transition to ongoing unsupervised visits, improve compliance and attendance in programs, improve reporting of case information to the courts, and educate attorneys, advocates, and clients about the role of supervised visitation.

*For questions or additional information regarding the Access to Visitation Grant program, please contact Shelly Danridge, Acting Access to Visitation Coordinator, or Youn Kim, Staff Analyst, at 415-865-7568, or e-mail [shelly.danridge@jud.ca.gov](mailto:shelly.danridge@jud.ca.gov) or [youn.kim@jud.ca.gov](mailto:youn.kim@jud.ca.gov).*

1. Fam. Code, § 3203.
2. Fam. Code, § 3204(b)(2).

## GETTING TO KNOW CFCC STAFF

### Did You Know?

This new column will provide readers with information about CFCC staff, personalizing the names that appear in the masthead. It also will become a forum for recognizing our staff. In future issues, it will include CFCC statistics as well as profiles, accomplishments, and news of staff members.

Fifteen CFCC staff members are attorneys, 11 are analysts, and 7 are coordinators and support staff.

Thirteen staff members have backgrounds in family issues, 9 have backgrounds in juvenile issues, 4 have backgrounds in both family and juvenile issues, 1 has a background in mental health, and no staff member has a background in probate matters.

Sixty-six percent of the staff are funded by grants or interagency agreements or are temporary.

One staff member has raised racing pigeons for over 40 years, and another staff member has owned and raised Morgan horses for 19 years.

# Postadoption Contact Agreements Given Legitimate Standing in California

*Bruce M. Rappaport, Ph.D.*

*Executive Director, Independent Adoption Center*

A major milestone for mediation and postadoption agreements was reached when, on September 29, 2000, California Governor Gray Davis signed new legislation giving legal standing to these agreements and requiring that mediation options be available to all birth parents in the foster care process. The new law is designed to speed up the permanency placement process and protect the child's right to not be cut off from his or her past. The bill, Senate Bill 2157, was submitted by State Senator Adam Schiff and was sponsored by the Independent Adoption Center, a national, fully open adoption agency with headquarters in California. Both the California Welfare Directors Association and the state Department of Social Services added their endorsements. The new law's coverage is limited to adoptions in the foster care system, where the need is greatest.

The postadoption contacts regulations legitimate the right of a child to have some form of contact with his or her biological parents. This is contrary to current social work practice, which requires the child, now having finally found a permanent home, to break all of his or her ties with past family members—parents and often siblings. For years, the social work establishment has argued that only by breaking all their ties to their past families can children bond with their new families. In reality, the opposite result occurs: The message the children get from such a severance is that no family can ever be counted on.

Not surprisingly, under these circumstances attachment disorders—meaning the inability or unwillingness of a

child to learn to trust family and friends—are widespread. And the damage caused by this cruel form of closed adoption is, in many ways, even greater than that in closed infant adoptions: The children from foster care are old enough to have had a significant relationship with their parents that is being totally abandoned.

The new law recognizes the importance to children of maintaining some connection to their past:

... Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children.<sup>1</sup>

This legislation is seen as critical to the success of recent efforts to speed up the adoption process using voluntary mediation. Many birth parents contest any attempt to have their child placed in a permanent home. While this is understandable, the result is damaging to the children, for the subsequent court battles delay the child's badly needed permanent placement.

With permanency mediation, based on a model developed by Jeanne Etter, the birth parents are asked to voluntarily relinquish their rights to contest the termination of their parenting rights in return for the assurance that they will still have some, albeit limited, contact with their child. The adoptive parents establish this supervised contact with the birth parents in return for an end to the court battles that prevent their final adoption of the child. These agreements are purely voluntary and must be entered into by all parties (even the adopted child if he or she is old enough). Where this practice has been tried, in

Oregon and elsewhere, it has cut the time it takes for the child to be permanently placed by up to 50 percent. As a result, the child does not have to spend his or her critical childhood years without the support of a stable family.

The primary legal impediment to a wider use of such mediation procedures has been the lack of enforceability of the agreements reached through the mediations. Although birth parents have been asked to give up their legal rights to contest the case, they have had no guarantee that the agreement they have negotiated will be honored. Moreover, the lack of a legal basis for these agreements carries the very powerful message, intended or not, that open adoptions are not legitimate. If open adoptions are valid, after all, then any agreement made about postadoption contact should also be legitimate.

In effect, the postadoption contacts legislation extends to all dependency adoptions the enforceability provisions established a few years ago for agreements reached in kinship adoption cases. The law not only provides for the enforceability of mediated postadoption agreements but mandates that in all dependency adoptions in California, the birth parents must at least be offered the option of a voluntary mediated agreement that works for all of the parents and, most important, for the child.

Each social study or evaluation made by a social worker or child advocate appointed by the court, required in evidence pursuant to Welfare and Institutions Code section 358, shall specify whether the parent has been advised of his or her right to participate in adoption planning, which includes the option of entering into a postadoption contact

## Postadoption Contact Agreements

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agreement. SB 2157 would require the social study to also contain discussion specifically addressing the parent's option to enter into a postadoption contact agreement.<sup>2</sup>

By July 1, 2001, regulations to enforce the provisions of the bill are to be established by the state Department of Social Services, and the Judicial Council is to adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

*Dr. Rappaport is the founder and executive director of both the Independent Adoption Center and the National Federation for Open Adoption Education and the author of The Open Adoption Book: A Guide to Making Adoption Work for You (New York: Macmillan, 1998). The Independent Adoption Center was founded in 1982, is a licensed agency, and is the largest and oldest fully open adoption/postadoption contact agency in the country.*

1. Fam. Code, § 8714.7 (amended).

2. Welf. & Inst. Code, § 358.1 (amended).

# 2000 Legislative Summary

**D**uring the second half of the 1999–2000 legislative session, the Legislature and Governor enacted more than 95 bills that affect the courts and are of general interest to the legal community. Many of these bills relate directly to issues involving children and families. A selection of pertinent bills follows. The effective date of legislation is January 1, 2001, unless otherwise noted.

Until the annual pocket parts are issued, bill texts can be examined in their chaptered form in *West's California Legislative Service* or *Deering's Legislative Service*, where they are published by chapter number.

Chaptered bills and legislative committee analyses can be found at [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html) on the Internet. Individual chapters also may be ordered directly from the Legislative Bill Room, State Capitol, Sacramento, CA 95814, 916-445-2323.

## CODE OF CIVIL PROCEDURE

### CIVIL PROCEEDINGS: REFEREES: DISQUALIFICATION

SB 2153 SCHIFF, CH. 1011  
CCP 639, 1282.4

Requires that a motion to disqualify a referee appointed to hear and determine discovery matters be made either (1) within 10 days after notice of the appointment or, if the party has not yet appeared in the action, within 10 days after the appearance if the referee is appointed for all discovery disputes in the action, or (2) at least 5 days before the date set for the hearing, if the referee assigned is known at least 10 days before the date set for the hearing and the discovery referee has been assigned only for limited discovery purposes. Requires the order appointing a discovery referee to indicate whether the referee is being appointed for all discovery purposes in the action.

### CHILD SUPPORT CLEANUP

AB 1358 SHELLEY, CH. 808  
CCP 695.211, 704.120; FAM 17212, 17434, 17505, 17508, 17518, 17604, 17714; W&I 11477.02  
URGENCY, EFFECTIVE: 09-28-00

Makes conforming changes to provisions governing the entities authorized to enforce the collection of child support

by deleting references to the district attorney and adding references to the local child support agency. Makes other technical changes.

### CHILDREN: NAME CHANGES

AB 2155 PESCEtti, CH. 111  
CCP 1276, 1277, 1278

Authorizes the legal guardian of a child to petition for a name change on the child's behalf, regardless of whether one or both of the minor's parents are living. Requires the petition to be filed in the juvenile court or the probate court, whichever was responsible for appointing the guardian. Requires, where neither parent has signed the petition, that the petition include the names and addresses of the child's parents and that the parents be given notice at least 30 days prior to the hearing. Requires the court, in determining whether to grant the name change, to consider whether the child will remain under the guardian's care until the child reaches the age of majority.

### DOMESTIC VIOLENCE: NAME CHANGES

AB 205 LEACH, CH. 33  
CCP 1277, 1278; GOV 6205 ET SEQ.

Requires petitions and orders in an action for a name change of persons in the domestic violence confidential

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address program to indicate in place of the person's name that it is confidential and on file with the Secretary of State. Makes further provisions regarding maintenance of confidentiality of Secretary of State records.

## EDUCATION CODE

### COMPULSORY EDUCATION

*SB 1913 MCPHERSON, CH. 465  
EDU 48293*

Authorizes the court to order a person convicted for failing to send his or her child to school pursuant to the attendance laws to immediately enroll the child in the appropriate school or educational program and provide proof to the court. Sunsets January 1, 2005.

## EVIDENCE CODE

### DOMESTIC VIOLENCE: EVIDENCE, FILING FEES

*SB 1944 SOLIS, CH. 1001  
EVI 1107, 1370; FAM 6222; PEN 13701*

Provides that expert testimony regarding battered women's syndrome is admissible in a criminal action. Provides that no filing fee shall be charged for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order when the request for the other order is necessary to obtain or give effect to the protective order. Creates a new exception to the hearsay rule for evidence of a statement made to a physician, nurse, or paramedic by a declarant who meets specified criteria.

### DOMESTIC VIOLENCE: ELDER ABUSE

*AB 2063 ZETTEL, CH. 97  
EVI 1109*

Permits evidence of prior acts of abuse of an elder or a dependent adult to be admitted to prove the defendant's conduct when the defendant is accused of domestic violence or abuse of an elder or a dependent adult.

## FAMILY CODE

### DOMESTIC VIOLENCE: TEMPORARY RESTRAINING ORDERS

*AB 2914 ASSEMBLY COMMITTEE ON JUDICIARY, CH. 90; FAM 243  
URGENCY, EFFECTIVE: 07-05-00*

Provides that when a temporary restraining order is issued with notice pending the hearing, the applicant must serve the documents on the respondent at least 15 days before the hearing.

### CHILD CUSTODY PROCEEDINGS: INVESTIGATION OF SEXUAL ABUSE ALLEGATIONS

*SB 1716 ORTIZ, CH. 926  
FAM 1816, 3027, 3110.5, 3112, 3118*

Authorizes the family court to request that the local child protective services agency conduct an investigation and requires child protective services to report back to the court regarding its investigation when allegations of child sexual abuse are made in a contested custody case. Directs the Judicial Council to develop standards for child sexual abuse training for evaluators and mediators. Provides that on or after January 1, 2005, court-connected and private custody evaluators shall not engage in evaluating, investigating, or mediating child custody issues unless they have completed child sexual abuse training.

### CHILD SUPPORT: NATIONAL MEDICAL SUPPORT NOTICE

*SB 2045 SCHIFF, CH. 119  
FAM 3760, 3773, 17422*

Requires the local child support agency enforcing a child support order to use the federally mandated National Medical Support Notice, in lieu of the health insurance coverage assignment order, when the court has ordered that a parent provide health insurance for a child.

### ADOPTION: PARENTAL RIGHTS

*FAM 7660, 7662, 8801.3, 8802, 8814.5, 9102*

Provides that in an adoption proceeding the prospective adoptive parent may file a petition to terminate the father's parental rights. Also specifies the procedure for a birth parent to revoke consent to an adoption. Shortens the

statute of limitations on commencing action to set aside an adoption based on fraud from five years to three years.

### MINORS: ADOPTION: DEPENDENT CHILDREN

*AB 2921 ASSEMBLY COMMITTEE ON HUMAN SERVICES, CH. 910  
FAM 8703, 8714, 8714.5, 8714.7, 8715, 9201, 9202, 9203; W&I 366.21, 366.22, 366.24, 366.25, 366.26, 366.3*

Requires written notice to inform the birth parents of the adopted person's right, upon attaining the age of 21, to request from the department or agency the name and address of the adoptee's birth parent or parents. Requires that this notice give the birth parent the opportunity to indicate whether or not to disclose this information. Changes all references to "kinship adoption agreements" to "postadoption contact agreements."

### POSTADOPTION CONTACT AGREEMENTS

*SB 2157 SCHIFF, CH. 930  
FAM 8714, 8714.5, 8714.7, 8715; W&I 358.1*

Requires that a postadoption contact agreement entered into between the petitioner and the birth parent be attached to and filed with the petition for adoption. Directs the Judicial Council to adopt specified rules of court and forms by July 1, 2001.

## GOVERNMENT CODE

### YOUTHFUL OFFENDERS: RESTITUTION ORDERS

*SB 1943 ORTIZ, CH. 481  
GOV 16373*

Requires that restitution orders issued by the court in juvenile delinquency proceedings identify each victim and the amount of each victim's loss to which the order pertains, unless the court for good cause finds the order should not identify the victim or victims. Requires, when the amount of victim restitution is not known at the time of disposition, that the court order identify the victim or victims and state that the amount of restitution for each victim is to be determined. Requires that the court also iden-

## 2000 Legislative Summary

*Continued from page 23*

tify on the court order, when feasible, any co-offenders who are jointly and severally liable for victim restitution.

### JUVENILES: CRIME PREVENTION: ALLOCATION OF SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUNDING

AB 1913 CARDENAS, CH. 353  
GOV 30061, 30062, 30063, 30064  
URGENCY, EFFECTIVE: 09-07-00

Allocates 50 percent of the Supplemental Law Enforcement Services Fund to counties to implement a comprehensive multiagency juvenile justice plan with specified components and objectives, and requires that the plan be developed by the local juvenile justice coordinating council in each county.

## LABOR CODE

### VICTIMS OF DOMESTIC VIOLENCE EMPLOYMENT ACT

AB 2357 HONDA, CH. 487  
LAB 230, 230.1

Prohibits any employer from discriminating against an employee who is a victim of domestic violence and who takes time off to seek medical aid or counseling services. Requires the employee to give the employer reasonable advance notice of the intention to take time off and requires the employer to maintain confidentiality.

## PENAL CODE

### DOMESTIC VIOLENCE: ARRESTS WITHOUT WARRANTS

AB 2003 SHELLEY, CH. 47  
PEN 836

Adds "dating relationships" to the list of personal relationships that justify an arrest without a warrant for assault and battery where a domestic violence restraining order exists.

### DOMESTIC VIOLENCE: BATTERERS' INTERVENTION PROGRAMS

AB 1886 LOWENTHAL, CH. 544  
PEN 1203.098

Recharacterizes batterers' programs as batterers' intervention programs and requires facilitators of these programs to meet minimum training requirements and to complete a minimum of continuing education.

### CHILD WITNESS: CLOSED CIRCUIT TELEVISION

SB 1715 ORTIZ, CH. 207  
PEN 1347

Extends to January 1, 2003, the sunset date of the provisions that authorize a minor under age 13 to testify via closed circuit television when testimony relates to an alleged sexual offense on or with a minor or when the minor is a victim of a violent felony.

### CHILDREN OF INCARCERATED WOMEN: STUDY

AB 2316 MAZZONI, CH. 965  
PEN 7440 ET SEQ.

Requires a study of the children of mothers who are incarcerated in state prison. This bill would require the California Research Bureau in the California State Library, pursuant to specified guidelines, to conduct a study of the children of women who are incarcerated in state prisons.

## VEHICLE CODE

### MINORS: ALCOHOL AND DRUG EDUCATION

AB 803 TORLAKSON, CH. 1063  
VEH 13352.6, 23502; H&S 11836

Requires the court to order a person between the ages of 18 and 21 convicted of a first offense of driving with a blood alcohol level of .05 percent or higher, in addition to any other penalties, to complete the educational component of a driving-under-the-influence program. Requires completion of the entire program for a second or subsequent offense. Prohibits the Department of Motor Vehicles from reinstating the convicted person's driving privilege until it receives proof of completion of the program.

## WELFARE AND INSTITUTIONS CODE

### JUVENILE JUSTICE COMMISSIONS AND JUVENILE COURT ORDERS

SB 1611 BOWEN, CH. 908  
W&I 229.5, 362, 827

Authorizes a juvenile justice commission to review minors' confidential records when conducting an inquiry of any group home and to inspect juvenile court case files, provided it keeps the identities named in those records confidential. States that a private service provider, in addition to a government agency, may be joined by a juvenile court that determines that the provider has failed to meet legally obligated services.

### MINORS: DRIVING UNDER THE INFLUENCE

AB 2744 OLLER, CH. 228  
W&I 256

Excludes from the jurisdiction of the Informal Juvenile and Traffic Court specific provisions of the Vehicle Code that prohibit driving a vehicle while under the influence of an alcoholic beverage, any drug, or both; driving with an excessive blood-alcohol concentration; and driving when addicted to any drug.

### CHILD CUSTODY: MODIFICATION OF JUVENILE COURT ORDER

AB 2464 KUEHL, CH. 921  
W&I 302

Provides that any order made by the juvenile court regarding the custody of, or visitation with, a child at the time the juvenile court terminates its jurisdiction shall be a final judgment and shall remain in effect after that jurisdiction is terminated. Prohibits the court in family law proceedings from modifying a juvenile court order unless the court finds that circumstances have significantly changed since the juvenile court issued the order and that modification of the order is in the best interest of the child.

### DEPENDENCY PROCEEDINGS: PATERNITY

AB 1716 ROBERT PACHECO, CH. 56  
W&I 316.2

In dependency proceedings, requires the juvenile court to consider specified

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## 2000 Legislative Summary

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factors that the juvenile court deems appropriate when making inquiry as to the identity of the father, including whether any man has declared paternity of the child by signing a voluntary declaration. Requires the juvenile court, after an inquiry, proceeding, or determination regarding paternity, to note its findings in the minutes of the court.

### **DEPENDENT CHILDREN: COUNSEL**

*SB 2160 SCHIFF, CH. 450  
W&I 317, 326, 326.5*

Requires the appointment of counsel for every child who is the subject of a dependency proceeding unless the court finds the child would not benefit from the appointment of counsel. Requires the Judicial Council to adopt rules of court concerning appointment of a guardian ad litem for a child and case-load standards for appointed counsel.

### **DEPENDENT CHILDREN: SIBLING RELATIONSHIPS**

*AB 1987 STEINBERG, CH. 909  
W&I 361.2, 366, 366.1, 366.3, 388, 16002, 16501.1*

In juvenile dependency cases, requires that the plan prepared by the social worker or Court Appointed Special Advocate for the court include consideration of the sibling relationship and its impact on orders for custody and visitation. Requires that the court's order placing a child in foster care include an order for visitation with siblings unless the court finds that visitation with a sibling would be detrimental. Authorizes any person, including the dependent child, to petition the court to assert a sibling relationship to a dependent child and to request visitation or placement with the child.

### **DEPENDENT CHILDREN: TERMINATION OF JURISDICTION**

*AB 686 ARONER, CH. 911  
W&I 362, 366.3, 391, 727*

Requires the county welfare department to ensure that a dependent child who has reached the age of majority is

present in court for any hearing to terminate jurisdiction, unless the child does not wish to appear, and to submit a report verifying that certain information, documents, and services have been provided. Authorizes the court to direct the parents or guardians to ensure the child's school attendance. Requires the court to consider the need for, and progress in providing, the required information, documents, and services to the child. Permits the court to terminate jurisdiction if the county welfare department has offered services refused by the child or the child cannot be located after reasonable efforts by the department; allows the court to continue jurisdiction if termination would be harmful to the best interest of the child. Requires the Judicial Council to promulgate related rules and forms.

## **JUVENILE OFFENDERS: RELEASE FROM CUSTODY**

*SB 1603 PEACE, CH. 663  
W&I 629, 663*

Provides that, as a condition of release of a minor to home supervision, the probation officer shall require the minor to sign, and may also require a parent, guardian, or relative to sign, a written promise to appear before the probation officer at juvenile hall.

## **CHILDREN: FOSTER CARE**

*AB 2307 DAVIS, CH. 745  
W&I 16000, 16003*

States the intent of the Legislature that preferential consideration be given to placement of a child in foster care with a relative. Requires each county to inform the caregiver relative of the availability of training and orientation programs.

# Summaries of Newly Adopted Rules, Forms, and Standards

Following is a list of the rules, forms, and standards adopted by the Judicial Council on October 27, 2000, that directly affect family and juvenile law. For a complete list of rules, forms, and standards, please visit [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

■ **Juvenile Court: Educational Rights of Children (amend Cal. Standards Jud. Admin., §§ 24(d)(2), 24(g), and 24(h))** Section 24 of the Standards of Judicial Administration was amended to provide guidance to the juvenile court in considering the educational needs of children.

■ **Juvenile Delinquency Cases: Rules Implementing Federal and State Requirements for Foster Care Placements (amend Cal. Rules of Court, rules 1401, 1404, 1405, 1407, 1413, 1470, 1475, 1494, and 1496; adopt rule 1496.5)** These rules address wards in foster care placements. The changes bring rules into compliance with Title IV-E of the Social Security

Act as well as recently enacted California law.

■ **Indian Child Welfare Act Application (amend Cal. Rules of Court, rule 1439)** The revision to this rule makes the criteria for the application of ICWA consistent with Welfare and Institutions Code section 360.6(c).

■ **Update of Guardianship Pamphlet (revise Form JV-350)** This form was revised to conform with statutory changes and was made more understandable and informative.

■ **Juvenile Dependency Rules and Forms on Review Hearings and Dependency System (amend Cal. Rules of Court, rules 1402, 1423, 1441, 1456, 1460, 1461, and 1462; revise Forms JV-055 and JV-320; adopt Form JV-225; approve Forms JV-180, JV-210, JV-215, and JV-225)** These rules and related forms were amended to make them clearer and to comply with recent legislative changes.

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## Rules, Forms, and Standards

*Continued from page 25*

■ **Juvenile Dependency: Appellate Rules and Forms** (amend Cal. Rules of Court, rules 39, 39.1, 39.1A, and 39.1B; revise Form JV-820) The changes to these rules and forms are in conformity with recent statutory changes.

■ **Court-Connected Child Protection/Dependency Mediation: Uniform Standards of Practice** (adopt Cal. Standards Jud. Admin., § 24.6) These standards describe the responsibilities of courts and mediators for medication programs; outlines the procedures that should be included in local protocols; describe minimum qualifications and ongoing education requirements for mediators; and list ethical standards of conduct.

■ **Family and Juvenile Law Cross-Over Rule and Forms: Order Determining Custody, Juvenile Custody Form, Application and Order for Appointment of Guardian Ad Litem of Minor** (amend Cal. Rules of Court, rule 1457; revise and renumber Form 1296.50; revise Form JV-200) These cross-over changes to a rule and forms conform with recent statutory changes and enable forms to be used in both family and juvenile law courts.

■ **Juvenile Hearings: Persons Present** (amend Cal. Rules of Court, rule 1410) This rule was amended to conform with recent statutory changes to Welfare and Institutions Code sections 346, 676, and 676.5 (Sen. Bill 334) regarding attendance of victims, people in support of witnesses and victims, and members of the public at juvenile court hearings.

■ **Family Law Rule and Forms for Processing Child Support Cases** (adopt Cal. Rules of Court, rule 1280.15; adopt Forms 1292.17, 1296.87, 1296.88, 1296.89; revise Form 1296.91) Rule 1280.15 creates a procedure for litigants to file a motion

claiming mistaken identity in child support cases, and instructs litigants and attorneys on proper forms to use when filing such a motion.

■ **Processing Child Support Cases: New and Amended Rules and New Family Law Form** (amend Cal. Rules of Court, rule 1280.4; adopt rules 1280.12, 1280.13, and 1280.14; approve Form 1299.77) These rules and forms were amended and adopted to achieve uniformity in the handling of Title IV-D child support cases.

■ **Miscellaneous Family Law Rules and Forms** (amend Cal. Rules of Court, rules 1216 and 1253; adopt rule 1278; repeal rules 1224 and 1228; revoke Form 1284) These forms were revised to conform with recent statutory changes and improve clarity and procedure.

■ **Court Appointed Special Advocate** (amend Cal. Rules of Court, rule 1424) The revised rule creates guidelines for the copying, distribution, and timely submission of CASA court reports.

■ **General Family Law Forms** (revise Forms 1283 and 1286.75; approve Form 1285.89) The *Family Law Summons* (Form 1283) was revised to conform with a recent statutory change that a litigant can use his or her own separate property to pay for attorneys' fees. The form was also modified to reflect the new rule that the clerk will keep the original summons with the initial filing so that a litigant will simply receive a copy and then file an original proof of service with the court after service of the initial family law pleadings. The *Application for Separate Trial* (Form 1286.75) was revised to clearly state the terms that a judge can order in granting a motion to terminate the status of a marriage in a bifurcated procedure before all the issues in the dissolution are resolved. The revised form is designed to be used as an attachment to a *Notice of Motion or Order to Show Cause*.

New Form 1285.89 was approved to allow for registration of interstate child support orders. The form also sets out the procedures to be followed by court clerks in providing notifications to all parties regarding the request for registration.

■ **Domestic Violence and Family Law Support Forms** (revise Forms DV-100, DV-110, DV-120, DV-130, DV-140, DV-150, 1281, 1282, 1296.31B, 1296.31C, 1296.60, 1296.80, 1296.81, MC-150, and GC-210) Technical and clarifying changes were made to the forms. In addition, the forms were made to conform with recent statutory changes regarding recording of prohibited communications.

■ **Requesting Psychotropic Medication of Juveniles** (adopt Cal. Rules of Court, rule 1432.5, and Form JV-220) A new rule and form were adopted to implement recent legislative action that added Welfare and Institutions Code section 369.5 (Sen. Bill 543) giving the juvenile court sole authority and responsibility for making orders regarding the administration of psychotropic medication to abused and neglected children who have been removed from the custody of their parents.

■ **Implementation of Proposition 21 and Senate Bill 334** (amend Cal. Rules of Court, rules 1430, 1431, 1470, 1480, 1483; revise Form JV-710; adopt Forms JV-615, JV-635, JV-750, and JV-751) Amendments were made to rules and forms to implement Proposition 21, the "juvenile crime initiative," and recent statutory changes in the administration of justice in delinquency cases.

# New Domestic Violence Prevention Act Case

## DEFINES "DATING RELATIONSHIP" FOR FIRST TIME IN CALIFORNIA

***Oriola v. Thaler* (2000) 84 Cal.App. 4th 397 [100 Cal.Rptr.2d 822]. Court of Appeal, First District, Division 2.**

The trial court dismissed a woman's application for a restraining order for lack of jurisdiction under the Domestic Violence Prevention Act (DVPA). The trial court found that Joy Oriola's relationship with Adam Thaler, against whom she was seeking the order, did not constitute a "dating relationship" as used in the DVPA.

Oriola sought orders under the DVPA on August 7, 1998, seeking restraining and stay-away orders, as well as attorney fees and reimbursement for gym expenses of \$733.20 and lost wages of \$1,680. Oriola's declaration accompanying her application indicated that she met Thaler in the fall of 1996 at a gym where they both were members. In November 1996, they began to communicate at the gym and exchanged e-mail messages. Initially they were attracted to each other. In December, she invited him to a concert with a group of friends but realized, during the event, that she was not interested in him romantically. The next day, over the telephone, she told him she just wanted to be friends. They continued to see each other at the gym and spoke over the telephone. Thaler said he had recently moved to the area and did not have many friends, and Oriola said she would introduce him to other people to "expand his associations." Over the Christmas holiday, she invited him to her family's Christmas dinner. He expressed a desire to go out with her alone, so they met for a Sunday brunch and he talked about "how alone he felt." A week later, she invited him to a friend's party to introduce him to other people.

Several days after the party, he indicated that she did not spend enough

time with him. He said, "I don't know what I'd do if you started dating another man." She reminded him that she wasn't interested in establishing a romantic relationship, and while she would listen if he needed to talk, she didn't think they should "hang out" anymore. Shortly after that, until about June 30, 1998, he repeatedly called her (at various times, up to 40 times per day), stated in one telephone call that he wouldn't "stop being angry at [her] until [she] no longer exist[ed]," physically threatened her at the gym by hitting the sauna bench and banging the walls with his shoulders and elbows, and sent an "e-mail bomb" to her at work, with approximately 263 messages as the result of her e-mail address having been subscribed to receive crop, livestock, and U.S. Department of Agriculture reports from all 50 states. The overload "created a potential shutdown" at her workplace.

She made a police report in April 1998 out of fear for her physical safety, following a telephone call in late March 1998 when he said, "I have nothing to lose, you asshole." She stayed away from the gym for a number of weeks. The police report listed her as his "girlfriend." In the report, she described herself as having "befriended" him and having explained to him that she was not interested in him "outside of a platonic relationship." She filed a subsequent statement to change the description of her relationship from "girlfriend" to "acquaintance."

In a supplemental declaration in support of her application for restraining orders, Oriola stated that she had never been respondent's girlfriend but did "briefly date" him. She stated that after the concert she still found him attractive and considered the possibility that they could "continue to go out togeth-

er." After a few more times, when he became "very possessive," she realized she did not want a relationship with him. She later felt embarrassed that she had been attracted to him and felt uncomfortable with the entry in the police report that described her as his girlfriend. She did not want him to assume that their relationship "had reached that level."

Thaler posited that her application should be denied because a "platonic relationship" with an "acquaintance" did not amount to a "dating or engagement relationship" within the meaning of the DVPA, the restraining orders sought were overbroad, and the monetary relief she sought exceeded that available under the DVPA. He sought attorney fees and restitution for the vacation and sick leave he used after being served with her application at his place of work, without warning, in a humiliating manner. His declaration stated that he recognized her desire to have no contact with him and his intention to honor that request. He stated that they had expressly agreed to be "friends."

The trial court stated that "four outings in groups in 1996 is not a dating relationship" and dismissed the action for lack of jurisdiction. On September 4, 1998, Oriola filed a petition for an injunction under Code of Civil Procedure section 527.6. Thaler later stipulated to the entry of restraining orders which prohibited his contact with Oriola and required him to stay away from the gym during specified hours. Oriola appealed from the trial court's decision to deny her the DVPA restraining orders.

The appellate court affirmed the decision of the trial court. The appellate court found limited guidance from the legislative history of the statute as to what the Legislature intended by the term *dating or engagement relationship*. However, the appellate court stated that the DVPA "reflects no legislative intent to extend its protection to all categories of people who have social relationships with one another." Furthermore, the DVPA has to do with "domestic" relationships, meaning rela-

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## Case Defines Dating Relationship

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tionships of the home or family, and that the other relationships cited by the code (spouses, parents of minor children) involve a measure of exclusivity or continuity. The court noted that while *dating relationship* usually refers to a "romantic" rather than "platonic" relationship, those concepts are too abstract to provide useful guidance for judicial fact finding. Dating is a state of mind that people experience differently and for which "there are no reliable objective measurements" to help identify where it starts and ends.

The appellate court sought guidance from domestic violence prevention statutes and cases in other states and found that a number of them limit the term *dating relationship* by requiring a showing of "affectional involvement" and excluding casual social relationships. Thus, the appellate court found that, for purposes of the DVPA, "a 'dating relationship' refers to serious courtship. It is a social relationship between two individuals who have or have had a reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of the growth of that mutual interest, that has endured for such a length of time and stimulated such frequent interactions that the relationship cannot be deemed to have been casual."

The appellate court thus found that the instant case did not characterize a dating relationship because the parties did not have a continuing and mutually committed emotional relationship. They went on only four social outings (on one of which they were alone), and after their first date Oriola told Thaler she was not interested in him romantically. The court noted that Oriola was not left without any relief, since she had successfully obtained an injunction prohibiting harassment. Therefore, the trial court's ruling was affirmed.

# Delinquency Case Summaries

## CASES PUBLISHED FROM JULY 31, 2000, TO OCTOBER 31, 2000

### ***In re Allen N.* (2000) 84 Cal.App.4th 513 [100 Cal.Rptr.2d 902]. Court of Appeal, Third District.**

The juvenile court declared a child a ward of the court based upon sustained petitions of felony assault (Pen. Code, § 245(a)(1)) and great bodily injury (Pen. Code, § 12022.7). The child was committed to the California Youth Authority (CYA) for a maximum of 8 years and 10 months. The juvenile court also imposed the following probationary conditions: that the child (1) not contact or communicate with two specifically named persons or their families, (2) comply with a nonassociation order, (3) participate in anger control management classes, (4) not associate with individuals known to be members of gangs, and (5) not wear or display gang-related clothing, emblems, or paraphernalia. The child contended on appeal that the probation conditions were imposed in error because the child had already been committed to CYA. The People argued that the juvenile court still maintains jurisdiction over the child after commitment to CYA and that the conditions were in the best interest of the child.

The Court of Appeal affirmed the juvenile court's decision to commit the child to CYA, but struck the probation conditions. Welfare and Institutions Code section 602 provides that any person under the age of 18 is under the jurisdiction of the juvenile court when he or she commits an offense. Once a child is adjudicated a ward of the juvenile court, that court may retain jurisdiction until the ward attains the age of 21 or 25, depending on the nature of the offense. However, the appellate court noted that commitment to CYA brings about a drastic change in the child's wardship status and also removes the

juvenile court's direct supervision over the child. In the case of *In re Owen E.* (1979) 23 Cal.3d 398, 404-405 [154 Cal.Rptr. 204, 207], the California Supreme Court determined: "While different statutes—even different codes—regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and CYA are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation." In the instant case, the juvenile court's imposition of discretionary probation conditions constituted an attempt to supervise the child's rehabilitation, which is a function solely of CYA after the child has been committed. The appellate court stated that the imposition of probationary conditions constituted an impermissible attempt to be a secondary body governing the child's rehabilitation. Therefore, the appellate court struck the probation conditions that the juvenile court had imposed.

### ***In re Antonio C.* (2000) 83 Cal.App.4th 1029 [100 Cal.Rptr.2d 218]. Court of Appeal, Fifth District.**

The juvenile court declared a child a ward and placed him on probation after finding that the child had violated Health and Safety Code section 12305 by possessing an explosive. The child had allegedly lit an object and thrown it into the air. The child denied gang involvement, but he had a gang-related belt buckle and gang-related tattoos. The child's probation conditions barred him from "obtaining any new tattoos, brands, burns, piercings, or any voluntary scarring." The child appealed the

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## Delinquency Case Summaries

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probation determination, arguing that his 1st and 14th Amendment rights had been violated.

The Court of Appeal affirmed the decision of the juvenile court, but it modified the probation conditions related to piercing. The juvenile court has broad discretion to select appropriate probation conditions. Even if the probation conditions infringe on the child's constitutional rights, the conditions are valid if they are tailored to meet the needs of the child. A probation condition is invalid if it (1) has no relationship to the crime the offender was convicted of, (2) forbids conduct that is not reasonably related to future criminality, and (3) relates to conduct that is not itself criminal. (*People v. Lent* (1975) 15 Cal.3d 481 [124 Cal.Rptr. 905.]) The child argued that the probation conditions are overly broad, since they do not specify *only* gang-related markings or piercings and they prevent him from obtaining piercings and tattoos honoring his mother, girlfriend, or country. The appellate court determined that the condition forbidding body marking is reasonably related to the state's interest in protecting children. A child is prohibited from receiving a permanent tattoo with or without parental consent. (Pen. Code, § 653.) The child in this case had unlawfully obtained three tattoos, two of which were gang related. The condition prohibiting body marking does not unduly burden the child's free speech rights. It is also sufficiently related to his rehabilitation. Because the prohibition is content-neutral, forbidding not the message but rather the act of conveying the message, it constitutes a reasonable-manner restriction on the child's free speech rights.

Regarding body piercings, a child may have a tongue, lip, nose, or eyebrow pierced with parental consent. The appellate court determined that the absolute piercing prohibition was invalid under a *Lent* analysis because it

had no relationship to the crime committed by the child, relates to conduct that is not itself criminal, and bars conduct that is not reasonably related to future criminality. The appellate court therefore modified the condition to state that the child may not "obtain any pierc-

ings with any gang significance or not in compliance with Penal Code section 652(a)." The appellate court left the other provisions relating to body marking unchanged.

# Dependency Case Summaries

**CASES PUBLISHED FROM  
JULY 31, 2000, TO OCTOBER 31, 2000**

***In re Aljamie D.* (2000) 84 Cal. App.4th 424 [100 Cal.Rptr.2d 811]. Court of Appeal, Second District.**

The juvenile court denied a mother the chance to present evidence in a Welfare and Institutions Code section 388 modification petition hearing, terminated the mother's parental rights, and issued letters of guardianship to the children's maternal aunt.

The mother had five children, four of whom were dependents of the court due to the mother's drug abuse. This appeal was brought on behalf of two children, the second and third oldest. The children were detained when the mother was arrested for drug abuse and was incapable of caring for her children. The children were placed with their maternal aunt. At the six-month review hearing, it was evident that the mother had not enrolled in a drug program, but she had been attending some substance abuse meetings and had negative drug test results. At the 12-month review hearing, despite the fact that the mother had begun complying with her case plan and had eight clean drug tests, the juvenile court terminated reunification services and set the matter for a 366.26 hearing. The children were placed in long-term foster care, although their aunt was willing to be the children's legal guardian. The children's mother regularly visited her children, and she began having unmonitored visits and weekend overnight visits. The mother

filed a section 388 petition on the day of a review hearing. The court denied the petition. The mother filed a substantive similar 388 petition on the date of the scheduled contested 366.26 hearing, alleging that she had complied with her case plan by completing parenting classes, a domestic violence program, and other programs. The children also wished to live with their mother.

The court initially decided to conduct the section 366.26 hearing, which would then provide it with the evidence needed to consider the section 388 petition. However, essentially the section 366.26 and section 388 hearings were combined into one proceeding. After hearing the evidence, and under the mistaken assumption that the Department of Social Services had not received the section 388 petition, the court denied the petition and continued on the single issue of determining whether guardianship appointment was in the children's best interest. Later in the proceeding, the court conceded that the mother had complied with court orders, but because return of the children to their parents was not an option at the section 366.26 hearing, the court found legal guardianship in the children's best interest. The mother appealed this decision and the denial of a section 388 hearing.

The Court of Appeal reversed both orders of the juvenile court. Section 388 provides that a parent may petition the

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## Dependency Case Summaries

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court to change, modify, or set aside an order if he or she provides grounds of a change in circumstance or new evidence. If the best interest of the children may be promoted by the proposed change of order, the court must hold a hearing. In order to be entitled to hearing on a petition, the petitioner need not establish a probability of prevailing, but rather must show "probable cause." In this case, the appellate court determined that the mother had met this standard and established a prima facie case of changed circumstances. Also, the record was clear that juvenile court denied the 388 petition without holding a full evidentiary hearing. The court in this case must afford the mother a full and fair hearing regarding her change of circumstances before holding a section 366.26 hearing. The appellate court reversed the decision of the juvenile court and remanded for further proceedings.

### ***In re DeJohn B.* (2000) 84 Cal.App.4th 100 [100 Cal.Rptr.2d 649]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated the parental rights of both a mother and a father.

The parents' twin sons were taken into protective custody when they were not picked up at their daycare facility. The parents' whereabouts were unknown. The search for the mother was fruitless, although notice of the hearings involving her sons were sent to her last known Long Beach address. The father, who had a drug-related history, was located in jail and did not know of the mother's whereabouts. The father was in and out of jail throughout the children's dependency. After the initial search, no additional attempts were made by the Orange County Social Services Agency (SSA) to locate the mother or her address to provide her with notice of her children's proceedings. At

the six-month review hearing, the juvenile court terminated reunification services for both parents, and the case was set for a Welfare and Institutions section 366.26 permanency hearing. The father objected, and the mother was still not notified of the hearing. One month later, SSA located the children's maternal grandmother and through her obtained the mother's location. SSA's belated discovery of the grandmother's location and its inability to locate her earlier were unexplained.

Upon learning of the dependency proceeding, the children's mother had been in continual contact with the social worker and expressed interest in being reunited with her children. She had been trying to locate her children, and the father conceded that he had kept their children's location a secret from the mother. The mother raised a motion to set aside the findings after the six-month review and filed a Welfare and Institutions Code section 388 modification petition. The juvenile court denied the motion to set aside and denied the section 388 petition. The juvenile court indicated that notification was not necessarily required and that the mother failed to prove that the six-month review hearing would have had a different outcome had she been notified. The juvenile court was not impressed with the mother's efforts to find her children and thereafter terminated both parents' parental rights.

The Court of Appeal reversed the decision of the juvenile court and remanded due to lack of notice to the mother. The appellate court stated, "The failure to give notice carries . . . grave consequences in the dependency court, where parent-child ties may be severed forever. Social services agencies, invested with a public trust and acting as temporary custodians of dependent minors, are bound by law to make every reasonable effort in attempting to inform parents of all hearings." SSA is required by section 366.21(b) to give notice of hear-

ing to the child's parent. In this case, SSA failed to notify the mother of the six-month review hearing at which reunification services were terminated and a 366.26 hearing was set. The appellate court observed that SSA, rather than stipulating to a remedy according to due process and avoiding delay and the possibility of reversal, elected to defend the unjustifiable position that notice was not required. The appellate court rejected the argument that the "minors' interest in stability trumps the parents' constitutional rights." The appellate court distinguished the case from *In re Melinda J.* (1991) 234 Cal.App.3d 1413 [286 Cal.Rptr. 239] because in that case the social services agency made "sincere and extensive efforts to locate the parent." In this case, SSA did nothing to locate the mother (i.e., not asking the father about others who might know where she was, and having no reason for the grandmother's not being located sooner). The appellate court also rejected SSA's argument that the mother had waived her right to appeal through her lack of response.

The father also appealed, requesting that his parental rights be reinstated if the mother prevailed, although there was no independent error relating to his case. Rule 1463(a) of the California Rules of Court provides that the court may not terminate the parental rights of one parent under section 366.26 unless that person is the only surviving parent or the rights of the other parent have been terminated or relinquished to SSA. Because the appellate court was reinstating the mother's parental rights, the father's parental rights must also be reinstated. This outcome was in the children's best interest. The appellate court noted that the order terminating the father's reunification services was unaffected by the decision to reinstate parental rights. The appellate court reversed the decision terminating the mother's and father's parental rights,

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## Dependency Case Summaries

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reversed the orders made at and subsequent to the six-month review hearing regarding the mother only, and remanded for further proceedings conforming to their decision.

***In re Edgar O.* (2000) 84 Cal.App.4th 13 [100 Cal.Rptr.2d 540]. Court of Appeal, Second District, Division 2.**

The juvenile court terminated a father's reunification services and set a Welfare and Institutions Code section 366.26 permanency planning hearing.

The father has three children and is awaiting trial on charges that he murdered the children's mother. He has been incarcerated since the day of the murder. The children were placed with their maternal great-grandmother. The court initially ordered that family reunification services be provided and that the children visit their father in jail. Pursuant to a therapist's letter advising against the children's seeing their father, the juvenile court terminated the visits. The children were suffering from post-traumatic stress syndrome from seeing their father batter their mother before the murder, two of the children believed that their father had committed the murder, and there was high risk of deepened depression upon visiting with their father. The juvenile court later sustained an amended petition finding that the father in fact had shot the children's mother, the children had observed the father physically abusing their mother, the father had bro-

ken in to the mother's home, the father had a history of substance abuse and drug-related arrests, and the father's incarceration left the children with no support. The juvenile court denied reunification services for the father and set a 366.26 hearing. The father appealed.

The Court of Appeal denied the father's petition on appeal. The father argued that he was entitled to reunification services because, although he was incarcerated, he had not yet been sentenced and no specific finding had been made regarding the term of his incarceration. The appellate court found these arguments contrary to the meaning of section 361.5(e)(1), which states that if a parent is incarcerated, the court shall order reunification services unless it determines by clear and convincing evidence that those services would be detrimental to the child. In determining detriment the court shall consider factors such as age of the child, degree of parent-child bonding, length of sentence, nature of treatment, nature of the crime or illness, degree of detriment if services are not offered, and, if the children are over age 10, their attitude toward reunification.

The father argued that because "length of sentence is a factor," the term *incarcerated* should be interpreted to apply only to a person who has been convicted and sentenced. The appellate court noted that courts are not permitted to add words to a statute under the guise of interpretation. Here, as the appellate court discussed, the term *incarcerated* means imprisoned or confined, not "incarcerated, convicted, and sentenced." The appellate court interpreted the legislative intent to mean that, regarding reunification services, section 361.5(e)(1) applies to people who are not at liberty to come and go or schedule activities as they wish. The juvenile court appropriately applied section 361.5(e)(1). The appellate court also determined that there was clear and convincing evidence that granting

the father reunification services would be detrimental to his children.

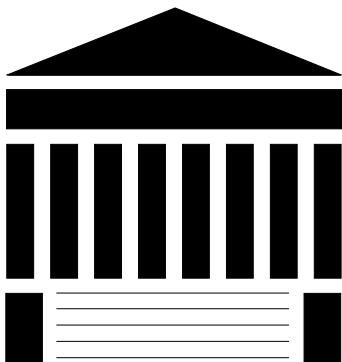
***In re Daijah T.* (2000) 83 Cal.App.4th 666 [99 Cal.Rptr.2d 904]. Court of Appeal, Third District.**

The juvenile court sustained dependency petitions on behalf of a mother's two youngest children.

The mother had been determined incapable of caring for her two youngest children because of emotional difficulties and substance abuse. The mother also had three other children who were subject to dependency proceedings. Eventually the mother was reunited with the three oldest children, but adoption was recommended as the permanent plan for the two youngest children. All five siblings continued to visit the mother every two weeks. The juvenile court set a Welfare and Institutions Code section 366.26 hearing. The mother then filed a section 388 modification petition seeking to vacate the 366.26 hearing and to receive reunification services regarding her two youngest children. The juvenile court summarily denied the mother's modification petition without an evidentiary hearing. The juvenile court found that the mother had not shown a changed circumstance as to the two youngest children and had not demonstrated that it would be in their best interest to set a hearing. The juvenile court found by clear and convincing evidence that the children were adoptable, and terminated the mother's parental rights. The mother appealed.

The Court of Appeal reversed the decision of the juvenile court. The appellate court initially analyzed what a party must plead in order to obtain an evidentiary hearing under section 388. The appellate court determined that the party must allege a change in circumstance or new evidence. The appellate court also sought to answer the question of whether or not the petition must plead facts showing that the best inter-

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est of the children will be promoted by the proposed change. Although section 388 is vague (stating that, "if it appears the best interest of the child may be promoted by the proposed change, then a hearing shall be ordered"), and rule 1432(f) of the California Rules of Court does not expressly require facts showing the best interest of the child, the appellate court held that these facts must be alleged in the petition. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 415 [33 Cal.Rptr. 85].)

The Court of Appeal concluded that the juvenile court had erred in determining that the petition was insufficient owing to the mother's failure to assert any changed circumstances with regard to her two youngest children. The juvenile court was correct in finding that the mother asserted changed circumstances with regard to her *own* situation. She had completed her reunification plan with her three oldest children, and they had been returned to her custody. The appellate court distinguished this case from *In re Baby Boy L.* (1994) 24 Cal. App.4th 596 [29 Cal.Rptr.2d 654], which the Sacramento Department of Health and Human Services had argued was parallel, because here the mother had shown her changed circumstances by more than a scintilla of proof and she had filed a written section 388 request. Because there is no authority requiring that a parent allege a changed circumstance with regard to a child, the juvenile court erred. In this case, the children would benefit from continued visitation as recognized by section 366.29. Because in this case the mother sufficiently showed changed circumstances and the petition alleged some evidence that the children's best interest would be promoted by sibling reunification, the court erred in denying the evidentiary hearing. The appellate court also stated: "We discern a disturbing

trend whereby referees in Sacramento County Juvenile Court have been erroneously denying parents their rights to evidentiary hearings in dependency cases [citations omitted]. This has got to stop." The case was remanded for evidentiary hearing, and if the mother does not prevail, a new section 366.26 hearing shall be conducted.

### ***In re Joseph G.* (2000) 83 Cal.App.4th 712 [99 Cal.Rptr.2d 915]. Court of Appeal, Second District, Division 5.**

The juvenile court terminated the parental rights of a child's mother and unknown father.

Because of the mother's drug abuse, the child was taken into custody when he was four days old. No father was named on the child's birth certificate. The man whom the mother had identified as the child's father was proved by a paternity test to be unrelated. The mother was not present at the hearing in which the juvenile court denied reunification services and scheduled a Welfare and Institutions Code section 366.26 hearing. When she was located, she identified another man as the child's father. This alleged biological father told the social worker of his interest in caring for the child if the child was in fact his. He was later served with written notice of the section 366.26 hearing. The alleged biological father did not request a finding of paternity, nor did he appear at the hearing. When the juvenile court terminated parental rights of both the mother and the alleged biological father, the alleged biological father filed an appeal.

The Court of Appeal determined that the alleged biological father had no standing to appeal. The alleged biological father argued that he had standing in this case because he was served with written notice of the section 366.26 hearing and named as an alleged father. The appellate court found that the alleged father was not a party of record. A party of record is a person named as

a party to a proceeding or someone who takes appropriate steps to become a party to the proceeding. The alleged father, a person whose biological paternity has not yet been established, does not have a known current interest in a dependency proceeding because paternity is not yet established. The alleged father was given statutory notice in this case and therefore given the opportunity to become a party of record. He did not avail himself of this opportunity and was therefore not a party of record. The appellate court also concluded that the alleged father's name appearing on the termination notice did not make him a party of record. Because an alleged biological father in a dependency proceeding who is not a party of record has no standing to appeal, the appellate court dismissed the alleged father's appeal in this case.

### ***In re Laura F.* (2000) 83 Cal.App.4th 583 [99 Cal.Rptr.2d 859]. Court of Appeal, Fifth District.**

The juvenile court terminated a mother's parental rights.

The mother had an extensive drug history. Both she and her daughter tested positively for opiates at the child's birth. At that time, the mother was failing to comply with her dependency case plan regarding her three older children. The juvenile court authorized relative placement of the infant, who was a member of the mother's Indian tribe. The mother failed to reunify with her daughter, and although the child's relative caregivers were providing a safe home and loved her very much, they were not able to adopt her or become her legal guardians. Long-term foster care was selected as a permanent plan through two semiannual permanency planning hearings.

The mother gave birth to another child with opiates in his system. He was placed with another relative caregiver in the tribe, and the mother also failed to

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reunify with her son. The juvenile court set a Welfare and Institutions Code section 366.26 hearing for both children, and the relative caregivers for both children were willing to adopt them. The attorney for the tribe appeared at the hearing and requested a contesting hearing, although no motion to intervene was ever filed. Neither the tribe nor the mother introduced evidence at the hearing, and the juvenile court terminated the mother's parental rights and ordered that the children be placed for adoption. The mother appealed the decision of the juvenile court.

The Court of Appeal, in a partially published opinion, affirmed the decision of the juvenile court. The mother's tribe had a resolution that its child-rearing practices and traditions should be recognized in all juvenile dependency proceedings and that adoption was not in the best interest of the child. The mother contended that the resolution was entitled to full faith and credit under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1911(d)), arguing that the resolution was "public act, record, and judicial proceeding" entitled to "absolute deference" in the juvenile court. Therefore, her contention was that the juvenile court's decision placing her two youngest children up for adoption was not proper under the tribal resolution.

The appellate court decided to assume that the resolution was in fact a public act, record, or judicial proceeding of the tribe under section 1911(d) of ICWA. In this case, both the tribe and the juvenile court had concurrent jurisdiction over the children, and either entity could conduct the dependency proceedings. The tribe did not exercise jurisdiction over the children, and it did have the right to intervene in the proceedings at any time (25 U.S.C. § 1911(c).) There was no petition by either the mother or the tribe to transfer

the case to the tribe, and the tribe did not intervene in the state court proceeding. Thus, the appellate court could not find that the resolution was a judgment or order entitled to Full Faith and Credit Clause protections.

The Full Faith and Credit Clause of the Constitution does not require a state to implement or apply another state's law in violation of its own procedures and public policy. Similarly, the full faith and credit provision of ICWA does not require the state court to violate its own policies by implementing the tribe's resolution. The tribe could have asserted jurisdiction over the case under ICWA. The appellate court noted the state's interest in providing stable, permanent homes for children and that adoption is the preferred plan for a dependent child. The appellate court concluded that if the juvenile court were to apply the tribal resolution it would violate the state's dependency policy. Therefore, it would not have been proper for the state to adhere to the tribal resolution, and the appellate court affirmed the decision of the juvenile court.

***In re Desiree F.* (2000) 83 Cal.App.4th 460 [99 Cal.Rptr.2d 688]. Court of Appeal, Fifth District.**

The juvenile court denied the Chukchansi tribe's motion to intervene in a dependency case after the Welfare and Institutions Code section 366.26 hearing.

A child was declared a dependent after testing positive for cocaine at birth. The mother, a Chukchansi Indian, and alleged father were notified of the detention and dispositional hearings. At the combined jurisdictional/dispositional hearing, the mother's reunification rights were denied, no findings were made according to the Indian Child Welfare Act (ICWA), and the case was transferred to another county. The child's foster family expressed an interest in providing a permanent home for the child. After the section 366.26 hearing but before the permanent plan hear-

ing, the Chukchansi tribe filed a motion to intervene pursuant to ICWA. (25 U.S.C. § 1911(c).) The tribe asserted that the child was an eligible member of the tribe, that the tribe had not been notified of the prior proceedings, that ICWA had not been complied with, and that the tribe sought to intervene and place the child with her grandmother. At the hearing, the juvenile court determined that because neither the mother nor the child was an enrolled member of the tribe at the time of the termination of parental rights, the order was valid. The juvenile court articulated that orders entered prior to the motion to intervene could not be set aside. The tribe's motion to intervene was denied, and the tribe appealed. The Court of Appeal reversed the decision of the juvenile court.

At the appellate court, the social service agency argued that the tribe's motion to intervene was untimely. The appellate court rejected this argument. A motion to intervene by an Indian tribe may be filed at any time during the proceeding. (25 U.S.C. § 1911(c).) ICWA was enacted to protect the interest of Indian children and seeks to promote stable, secure Indian tribes and families.

When an Indian child is involved in dependency proceedings, the juvenile court must notify the child's tribe due to the tribe's right to intervene. One of the purposes of this notice is to allow the tribe an opportunity to determine whether the child is an Indian. In this case, the child was not enrolled as a member of the tribe earlier in the process because the social services agencies in both counties failed to notify the tribe of the proceedings as required by rule 1439 of the California Rules of Court and by ICWA. The appellate court also noted that a child does not have to be enrolled to be considered a member of a tribe. The child was eligible to become a member of the tribe at the inception of the case, and therefore ICWA applied.

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The notice requirement is triggered when the juvenile court knows or has reason to believe the child may be an Indian child. The child's status need not be certain to invoke this requirement. The juvenile court must stay proceedings, as required, until at least 10 days after a tribe receives notice. There was no evidence that the tribe ever received notice of the proceedings regarding the child.

The agencies' failure to give the tribe notice of the proceedings warranted the appellate court to invalidate any orders that the tribe objected to. The tribe did not object to the orders made prior to the dispositional hearing nor the case transfer. In dicta, the appellate court advised that the juvenile court must conduct a jurisdictional hearing in accordance with ICWA. The juvenile court must also notify all tribes in which the child may be eligible for membership. Also, placement preferences set forth in ICWA must be adhered to, including emergency, foster care, and adoptive placements. In this case, both the child's maternal aunt and her grandmother have expressed interest in the child's being placed with them. If a member of the child's family expresses such an interest, the juvenile court must order such a placement, if only as an emergency placement.

***Kimberly H. v. Superior Court of San Diego County* (2000) 82 Cal.App.4th 67 [99 Cal.Rptr.2d 344]. Court of Appeal, Fourth District, Division 1.**

The juvenile court set a Welfare and Institutions Code section 366.26 hearing.

The San Diego Health and Human Services Agency filed a dependency petition on behalf of an 8-month-old child because the child's mother was unable to provide him with the necessities of life. The mother was incarcerated at the time the petition was filed, and

she had two other children with whom she had failed to reunify. Reunification services were denied the mother because of her failure to complete earlier treatment programs and her failure to reunify with the infant's siblings. The father had been receiving reunification services. The mother requested that a contesting hearing be set on the issue of substantial probability of return to the father by the 12-month date. The juvenile court denied the request, determined that there was no substantial probability that the child would return to the father within the next 6 months, and set a Welfare and Institutions Code section 366.26 hearing. The mother appealed the juvenile court's decision to deny a contested hearing.

The Court of Appeal held that the juvenile court's denial of the request for a contested hearing was proper. The appellate court discussed that a parent who has been denied reunification services under section 361.5(10) and (12) is not entitled to a contested hearing on the issue of substantial probability of return if the parent has not filed a section 388 modification petition alleging a change of circumstances. The appellate court explained that although parents generally have the right to hearings on contested issues determined by the court, section 366.21(e) provides that this right does not apply where the court has denied a parent reunification services. When the juvenile court terminates reunification services and sets a section 366.26 hearing, the burden is

then shifted to the parent to prove changed circumstances under section 388. The denial of a contested hearing at this point in the process is consistent with the public policy goal of providing children with a permanent, safe home in a timely manner. The juvenile court had mentioned to the mother, and the appellate court reiterated in the decision, that she may file a section 388 modification petition alleging that changed circumstances exist warranting the return of the child.

***In re Brian M.* (2000) 82 Cal.App.4th 1398 [98 Cal.Rptr.2d 881]. Court of Appeal, Fourth District, Division 3.**

The juvenile court denied reunification services to a mother.

The mother was arrested on an outstanding drug-related warrant, and the child was taken into protective custody. The Orange County Social Services Agency (SSA) alleged in the petition that the mother failed to adequately protect the child, failed to provide medical treatment, and was unable to care for her son. The mother had a history of drug abuse, and although she enrolled in a drug rehabilitation program, she failed to attend. Over the next seven years, the mother was arrested twice on drug charges. One of the conditions of her probation for the first arrest was to complete a 90-day rehabilitation program. She never attended this program, and she was arrested again. The juvenile court denied the mother reunification services, and the mother appealed.

The Court of Appeal sustained the juvenile court's decision. The juvenile court may deny reunification services if the parent has a history of extensive and chronic alcohol or drug use and has "resisted prior treatment" during a three-year period before the filing of a dependency petition or if the parent refuses or fails to comply with a drug or alcohol treatment program. (Welf. & Inst. Code, § 361.5(b)(12).) SSA must



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show that the parent enrolled in a rehabilitation program and either dropped out of the program or resumed regular drug use after a sobriety period. In this case, the mother was to enter a rehabilitation program as part of her probation. Because she agreed to this condition and it became a court order, the appellate court determined that this was the functional equivalent of enrollment in a drug program. The statute in this case was applicable because the mother agreed to attend a program and failed to do so, and thus the juvenile court had the discretion to deny reunification services. The appellate court also interpreted the language “resisted prior treatment” to mean “resisted treatment at any point.” Therefore, a long history of drug or alcohol abuse alone is not sufficient for a denial of reunification services. In this case, because the mother had resisted rehabilitation during the three years before the dependency filing and had received prior treatment, the juvenile court’s denial of reunification services was proper and the appealed order was affirmed.

***In re Jullian B.* (2000) 82 Cal.App.4th 1337 [99 Cal.Rptr.2d 241]. Court of Appeal, Third District.**

The juvenile court found good cause to reject the placement preference order in the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and placed a child with a non-Indian family.

The 17-month-old child was removed from his mother’s custody because of her substance abuse and arrest for driving under the influence. The child’s seven older siblings had been placed out of the mother’s custody as well. The juvenile court denied reunification services for the mother and set a Welfare and Institutions Code section 366.26 hearing. The social worker located the child’s great-uncle as an appropriate

extended family member. However, the social worker believed that there was not good cause to place the child with his uncle because (1) the uncle was 71 years old and did not identify another caretaker in case he became incapacitated, (2) he had 20-to-30-year-old criminal convictions that included vehicular manslaughter, (3) he continued to drink alcohol, (4) his support system was limited to his younger girlfriend, and (5) the uncle had problems with his girlfriend’s children and grandchildren. The tribe responded with a home study, which concluded that placement with the child’s uncle was appropriate under ICWA and that he spoke the tribal language, was a responsible member of the tribal community, was healthy and active, and considered himself married to his girlfriend for many years according to tribal traditions. At the section 366.26 hearing the juvenile court denied the request for a continuance, terminated parental rights, and bifurcated the placement issue. The juvenile court determined that the social service agency had met its burden by showing good cause to deem the preference for placement of the child with an Indian family inappropriate.

The child’s tribe appealed, contending that the court erred in finding good cause to place the child in a non-Indian home.

The Court of Appeal reversed the juvenile court’s finding, in this partially published opinion, that the Department of Health and Human Services (DHHS) had met the burden of establishing good cause to place the child outside the preferences of ICWA. ICWA was enacted to protect the best interest of Indian children and promote the stability and security of Indian tribes and families. According to ICWA, in the absence of good cause, preference is given to a child’s placement with a member of the child’s extended family, other members of the child’s tribe, or other Indian families. As applicable to this case, accord-

ing to Welfare and Institutions Code section 361.4, a criminal record check of the person with whom it is proposed that the child be placed must be conducted. The social service agency must request a waiver of disqualifying provisions of section 361.4 or support its reasons for not doing so.

In the present case, DHHS determined that there was no suitable placement in accordance with the preferences of ICWA. The tribe argued that the court denied the preferred placement based on section 361.4 even though none of the involved agencies considered whether a waiver was appropriate for the uncle. DHHS claimed that it did not request a waiver because of its understanding that the Department of Social Services (DSS) does not grant waivers, that DSS had granted the county the authority to waive, and that the county was not accepting that responsibility. Therefore, DHHS omitted to request a waiver because it would have been administratively futile and not because it lacked merit. The appellate court determined that, according to the Health and Safety Code and the Welfare and Institutions Code, the responsibility for granting or denying waivers or exemptions rests solely with the director of DSS because DSS is the ultimate overseeing authority for approval of community care licenses and adoptive placements.

The appellate court also concluded that in order to establish good cause to avoid a placement preference, the agency must request a section 364.1(g) waiver or explain why it did not do so. Any decision by a DSS director in denying a requested waiver must be justified, or else the purpose of ICWA is frustrated. However, the judgment regarding good cause is ultimately the juvenile court’s responsibility. The appellate court determined in this case that the juvenile court’s order finding good cause to place the child outside

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ICWA preferences was improper and remanded for further proceedings.

***In re Kamelia S.* (2000) 82 Cal.App.4th 1224 [98 Cal.Rptr.2d 816]. Court of Appeal, Second District, Division 4.**

When a child suffered injuries during one of her mother's manic episodes, a dependency petition was filed and the child was placed in the home of her father and paternal grandmother. The mother was to have monitored visits with the child, but the father had not cooperated with the order. The Department of Children and Family Services (DCFS) filed a section 387 petition to have the child removed from the father and grandmother's home and placed in foster care, based on allegations that the father subjected the child to unnecessary medical treatment in addition to interfering with the child's reunification with the mother. The juvenile court sustained the section 387 petition and ordered that the child be removed from her father's home. The father appealed. However, during the pendency of the appeal the father and the grandmother abducted the child, and their whereabouts were unknown. The juvenile court then issued a protective custody warrant for the child and arrest warrants for the father and grandmother.

The Court of Appeal dismissed the father's appeal. The appellate court stated that the abduction of the child violated the orders of the juvenile court, interfered with the mother's court-approved visitation, and frustrated the objective of dependency law. It was illogical and inequitable for the father to seek review of the orders that he had blatantly violated. The appellate court based its holding on the disentitlement doctrine, in which a party is deprived of the right to present a defense as a result of his or her violation of court processes, withholding evidence, de-

faulting on court-imposed obligations, or disobeying court orders or other default actions. In this case the father was participating in the dependency process and then decided to withdraw. It is impossible for the juvenile court to protect the child when her location is unknown and the father is responsible for the court's inability to implement the procedures that benefit the child's interest. The father cannot obtain review of a juvenile court's order and be in contempt of that order contemporaneously.

***In re Melvin A.* (2000) 82 Cal.App.4th 1243 [98 Cal.Rptr.2d 844]. Court of Appeal, Second District, Division 4.**

The juvenile court terminated a mother's parental rights regarding two of her children under Welfare and Institutions Code section 366.26.

At the section 366.22 permanency review hearing, the juvenile court terminated the mother's reunification services and set a section 366.26 hearing. At the 366.26 hearing, the mother's counsel asked to be relieved and another attorney was present to take the case. The juvenile court initially appointed the new attorney and granted a continuance but later rescinded those orders based on the objection of the social service agency counsel that the mother was not in attendance and the case could be unable to move forward. The children's attorney requested a continuance to permit the finalization of the adoptive home study. The juvenile court denied the request for a continuance, found that the children were likely to be adopted, terminated the mother's parental rights, and ordered no visits for the mother. The court stayed the order terminating parental rights until the home study was complete. Approximately eight months later the home study was completed, and then the juvenile court lifted the stay. The mother appealed days after the stay was lifted, contending that the juvenile court had erred in (1) discontinuing her visitation with her children,

(2) denying her motion for a continuance, (3) denying her attorney's request to be relieved, and (4) terminating her parental rights.

The Court of Appeal determined that the mother's first three contentions on appeal were untimely and dismissed the appeals. The juvenile court's orders discontinuing visitation, denying the substitution of counsel, and denying a continuance were each separately appealable. But, because these orders were not stayed, the mother should have appealed them as soon as they were entered instead of waiting until the stay of the order terminating parental rights was lifted. Under rule 1435(f) of the California Rules of Court, a notice of appeal must be filed 60 days after the juvenile court makes a final appealable order. In this case, eight months had passed since the juvenile court made the aforementioned orders.

The appellate court concluded that the juvenile court had erred in issuing a stay of the order terminating parental rights, but this error was harmless. The juvenile court's decision to terminate parental rights and simultaneously stay the order left the parent uncertain about both the order's status and her ability to immediately appeal the order. The juvenile court has the discretion to stay an order that is pending appellate review; this was not the case here. The juvenile court abused its discretion in granting the stay to accommodate the preparation of an adoptive home study. The juvenile court's error in staying the termination order was harmless, however, because the mother was not prejudiced by the delay caused by the stay.

The mother asserted that a section 366.26(c)(1)(A) exception—that the children would benefit from the continuation of the parent-child relationship and that the parent has maintained regular visitation with her children—applied in this case. Although the mother failed to raise this assertion in juvenile

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court and arguably waived this argument, the appellate court considered the merits of the claim. The court did so, in part, to address the mother's next contention, that she was denied effective assistance of counsel because her attorney failed to raise the (c)(1)(A) exception. The appellate court determined that, although the social worker's report was positive, regular visits did not occur for substantial periods of time and, moreover, the mother did not demonstrate that the children would suffer detriment if their relationship to her was terminated. The children had become attached to their grandmother, who was seeking their adoption and had provided them with excellent care. The appellate court found that even if the mother's attorney had raised and fully argued the 366.26(c)(1)(A) exception, the result would be unchanged. Therefore, the appellate court affirmed the juvenile court's order terminating the mother's parental rights.

***In re Diamond H.* (2000) 82 Cal.App. 4th 1127 [98 Cal.Rptr.2d 715]. Court of Appeal, Fourth District, Division 1.**

The juvenile court denied a mother reunification services.

The mother is developmentally disabled and was found to have a "chronic mental disorder that will never be in remission." She had been receiving services for approximately eight years, and the child's three older siblings were already declared dependents of the court because of the mother's inability to care for them. Days after the child was born, the San Diego County Health and Human Services Agency (HHS) filed a Welfare and Institutions Code section 300 petition. The mother was notified at the detention hearing that she had six months to participate in reunification services. The juvenile court continued the jurisdictional and

dispositional hearing so that it would trail the section 366.26 hearing of the child's sister. The juvenile court indicated that it would use the evidence from the sister's case in making a determination for the child. The juvenile court ultimately terminated the mother's parental rights over the child's older sister.

Considering many reports prepared for the older sibling's hearings and concerns about the mother's judgment, maturity, and inability to make emergency decisions for the child—who was likely to have special needs—the juvenile court declared the child a dependent of the court. The juvenile court also denied the mother reunification services pursuant to Welfare and Institutions Code section 361.5(b)(10). The mother appealed, contending that (1) there was insufficient evidence to support the jurisdictional finding, (2) removal of the child from her custody under section 361.5(c) was improper, (3) the juvenile court had abused its discretion in denying her reunification services, (4) the denial of services violated the Americans with Disabilities Act (ADA) and her rights to due process and equal protection, and (5) the denial of services after she was advised that she had six months to complete them was a violation of due process.

The Court of Appeal affirmed the decision of the juvenile court. Welfare and Institutions Code section 300(b) permits a judge to declare a child a dependent if the child has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness as a result of the parent's inability to care for him or her. The evidence in this case showed that the mother's chronic mental disorder, even with medical, therapeutic, and educational assistance, rendered her unable to care for her child. Because substantial evidence supported the finding that the mother was a current risk to the child, the alle-

gations of the petition were properly sustained.

The appellate court disagreed with the mother's next contention, that there was no clear and convincing evidence warranting removal. The child had special needs that required recognition and intervention that the mother could not provide. The juvenile court correctly removed the child from the mother's care because, even though the mother had received extensive services for many years, she lacked the judgment, maturity, and ability to make emergency decisions for the child and thus the child would be at risk if left in the mother's care.

The appellate court determined that the juvenile court's decision to deny reunification services to the mother was proper. Section 361.5(b)(10) states that reunification services need not be provided if the court has ordered a permanent placement for one of the child's siblings because the parent failed to reunify with that sibling, or if parental rights over a sibling have been terminated and the parent has not made an effort to treat the problems that led to the sibling's removal. In this case, permanent plans had been ordered for the mother's three older children after she failed to reunify with them. If section 361.5(b)(10) applies, the court has no discretion to provide reunification services unless it finds by clear and convincing evidence that doing so is in the child's best interest. Here there was no such showing.

The appellate court also held that the denial of reunification services did not violate the mother's rights under the ADA or her rights to due process and equal protection. The ADA does not apply directly to juvenile dependency proceedings and cannot be used as a defense. The courts and social service agencies are required to consider a parent's limitations and disabilities; howev-

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er, the ADA does not provide a separate basis for challenging the actions of the court or social service agency. Any challenge a parent has under the ADA for alleged violations must be raised in a separate cause of action in federal court. The mother's due process rights were protected in that the reasonable-efforts finding was based on her current circumstances. There was no equal-protection violation, because section 361.5(b)(10) bears a rational relationship to the purposes of the dependency statutes.

The mother contended that her due process rights were violated by the denial of reunification services because she was advised that she had six months to participate in and complete services. The appellate court was not persuaded by this argument. Procedural due process requirements focus on the right to notice and the right to a hearing. In this case the mother was notified of the HHS recommendation for the denial of reunification services when HHS submitted its report, and she had an opportunity to be heard. Therefore, her due process rights were not violated. The judgment was affirmed.

***In re Maria S.* (2000) 82 Cal.App.4th 1032 [98 Cal.Rptr.2d 655]. Court of Appeal, Second District, Division 4.**

The juvenile court ordered the termination of reunification services and parental rights.

While the mother was incarcerated for drug possession, she gave birth to her daughter. The Department of Children and Family Services (DCFS) detained the child and filed a petition under Welfare and Institutions Code section 300(b) and (g) (the child has suffered substantial risk, and an incarcerated parent cannot provide for the child). The juvenile court sustained the petition. The six-month review report recommended that the mother be released from prison, attend parenting classes, and provide a safe home for the minor. The report also noted that upon

the release of the mother, she might be deported by the Immigration and Naturalization Service (INS). The mother maintained contact with her child from prison through weekly telephone calls and daily letters. The mother was in fact deported upon her release from prison, and she was unable to attend subsequent hearings. The juvenile court terminated reunification services and set a section 366.26 hearing. The mother expressed interest in attending and was advised to obtain proper identification before entering the country. The mother's attorney indicated at the hearing that the mother's efforts to attend the hearing were unsuccessful but that she objected to the adoption of her child by a foster family. The juvenile court ordered the termination of parental rights. The mother appealed.

The appellate court reversed the juvenile court's order terminating parental rights. The key issue on appeal concerned the juvenile court's reunification decisions. The juvenile court failed to advise the mother of her right to writ review to challenge termination of reunification services and the setting of a section 366.26 hearing. The juvenile court also failed to make a finding under section 361.5(e)(1), which states that an incarcerated parent is entitled to reasonable services unless the court determines by clear and convincing evidence that those services would be detrimental to the child. Although the court made findings that reasonable services had been provided, that the case plan was appropriate, and that the mother failed to comply with the case plan, there was no evidence in the record to support these findings. Because the evidence that the mother might be deported upon her release from prison was undisputed, the case plan was flawed in requiring her to attend parenting and drug diversion programs. Also, while the mother was incarcerated, no counseling services were identified as available or offered to her. The appellate court stated that there was no opportunity for the mother to comply with the case plan

and reunify with her child. Although the child had thrived with her foster mother, termination of parental rights was not appropriate unless there had been a reasonable opportunity for the parent to reunify with her child. Because the juvenile court's findings lacked evidentiary support, the order terminating parental rights was reversed and remanded.

***Katheryn S. v. Superior Court of Orange County* (2000) 82 Cal.App.4th 958 [98 Cal.Rptr.2d 741]. Court of Appeal, Fourth District, Division 3.**

The juvenile court ordered a hearing to terminate a mother's parental rights under Welfare and Institutions Code section 366.26.

The juvenile court initially sustained a petition under Welfare and Institutions Code section 300 because there were allegations that the child had been sexually abused by the mother's live-in boyfriend. The child had been released into her mother's care under a conditional release to intensive supervision program (CRISP), but the mother fled to another state with the child for three years. While in hiding, the mother failed to obtain dental care for the child and did not enroll her in school.

When the dependency proceedings began, counsel was appointed for the mother; however, two years later counsel was relieved under *Janet O.* (1996) 42 Cal.App.4th 1058 [50 Cal.Rptr.2d 57] based on the mother's absence from the proceedings. Reunification services were ordered and six months later were terminated. The mother was located, arrested, and jailed in Washington state for child abduction. At the section 366.26 hearing, during the period of time in which the mother was in custody and without counsel, the child's attorney and the social worker asked for a continuance, but the juvenile court denied their request. The child's attorney argued against the termination of parental rights on the basis of the child's desire to continue her relationship with her parents. The juvenile court found that the child was adopt-

*Continued on page 39*

## Dependency Case Summaries

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able, that the termination of parental rights was not a detriment to the child, and that the section 366.26(c)(1) exception to termination did not apply. When the mother returned to California, a public defender was appointed for her, and she filed a writ of mandate, claiming that reasonable efforts to reunify were not provided and that she was entitled to counsel during the section 366.26 hearing as a due process right.

The Court of Appeal reversed the juvenile court's decision. Although the rule 39.1B petition would have been filed late, the appellate court construed the claims in the petition as a writ of habeas corpus. The court distinguished the instant case from the *Janet O.* case. In *Janet O.*, the parents refused to appear at the hearings and no longer wished to have contact with their children. In this instance, the mother did not abandon her child but rather hid with her for three years. The mother cared for her child each day, and the child was well adjusted. Therefore, there was no good cause to relieve the mother of representation by counsel.

The absence of counsel had likely led to erroneous decisions. The juvenile court orders had no evidentiary support. The appellate court noted that the role of the child's attorney is that of an advocate and not a neutral observer. The appellate court stated that the dependency system's purpose is to focus on "how to foster the best interest of the child, not on how to most effectively punish the mother." Also, regarding reunification services, the appellate court noted that no reunification services were provided to the mother and therefore the termination of these non-existent services was fictional. The appellate court determined that the mother was denied her due process right to counsel and granted the habeas corpus petition.

# Summaries of Other Child-Related Cases

## CASES PUBLISHED FROM JULY 31, 2000, TO OCTOBER 31, 2000

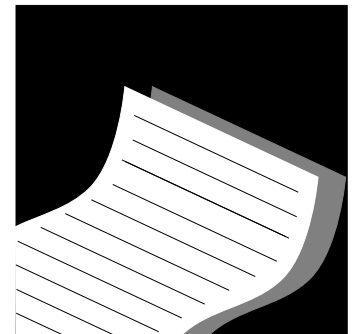
### *In re Jorge M.* (2000) 23 Cal.4th 866 [98 Cal.Rptr.2d 466]. Supreme Court of California.

The juvenile court adjudicated a child a ward of the court and ordered the child into a juvenile camp program for violating Penal Code section 12280(b) (possession of an assault weapon).

Law enforcement officers conducted a probation investigation when the child was on in-home probation for possession of a controlled substance. One of the officers asked where the child kept his possessions and subsequently found three rifles on the child's bed and an unregistered semiautomatic rifle with a "banana clip" magazine on a shelf near the bed. At the adjudication hearing, the juvenile court found the allegations in the wardship petition to be true and placed the child in a camp for a period not to exceed three years and eight months. The Court of Appeal reversed the assault weapons charge, holding that there was a lack of proof that the child "knew that the weapon possessed characteristics which brought it within the statutory definition of an assault weapon" as defined by the Assault Weapons Control Act (ACWA) (Pen. Code, §§ 12275–12290), as well as insufficient proof of the mental element under section 12280(b).

The Supreme Court reversed the judgment of the Court of Appeal. The Supreme Court assessed whether section 12280(b) constituted a public welfare offense that does not require proof of scienter. The Supreme Court determined that section 12280(b) was not a strict liability offense after it assessed the statute's history, the general provision of mens rea, the severity of punish-

ment, the seriousness of harm to the public, the difficulty in ascertaining the facts, the difficulty in proving mental state, and the number of expected prosecutions. However, because of the gravity of public safety addressed in ACWA, the substantial number of expected prosecutions, and the difficulty of proving actual knowledge, the Supreme Court indicated that the section was not intended to contain an "actual knowledge" element. The prosecution must prove that the person charged with possessing an unregistered assault weapon "knew or should have known the characteristics of the weapon bringing it within the registration requirements of ACWA." In this case, because the magazine was detachable and there was an indication of the type of weapon near the magazine's center, there had been sufficient evidence that the child knew or should have known that the gun had the characteristics of an assault weapon. Justice Kennard dissented in the opinion, stating that she agreed with the appellate court that an element of the offense was actual knowledge and that the prosecution in this case did not prove that element.



# Children's Activity Book: Educational and Fun

*Beth Kassiola, CFCC Staff Attorney*

In December 1999, the Center for Families, Children & the Courts (CFCC) published a children's activity book titled *What's Happening in Court? An Activity Book for Children Who Are Going to Court in California*. Because going to court can be intimidating for children and the court process is difficult to understand, the activity book seeks to educate children about the court process, to introduce new vocabulary, and to explain about the people who work in the judicial system. While children wait in court, they can pass the time with games, puzzles, drawings, and stickers. The activity book contains language and activities for all ages. It allows children to have fun and learn while they are in court.

During the activity book's initial distribution period, 50,000 books were delivered to California's courts and associated organizations. Because of the activity book's usefulness and success, approximately 40,000 more copies have been distributed. CFCC continually receives requests from court staff for additional copies. In May 2000, CFCC developed an interactive version of the book for the Web. In the period from May through September, the book registered, on average, 460 hits per month. Many Web site visitors also took advantage of the capacity to download the book from [www.courtinfo.ca.gov/programs/cab/](http://www.courtinfo.ca.gov/programs/cab/).

In September 2000, a survey was conducted to assess the success and usefulness of the activity book. The survey yielded 70 respondents, taken from the pool of persons who were ordering or reordering copies of the activity book. The respondents included judicial officers and court personnel, social workers and supervisors, court service super-

visors, attorneys, mediators, victim/witness coordinators, probation officers, a court clerk, a juvenile hall supervisor, a teacher, a foster parent, an adoption specialist, and a nurse.

The results of the study were encouraging. In responding to a question about the strengths of the book, the respondents were extremely complimentary. The positive responses included statements that the book interested children of all ages, was informative and fun, reduced the anxiety of parents and children appearing in court, was well written and well illustrated, was diverse, was interactive with coloring and text, described and defined the roles of court personnel, and could be personalized. Children had high praise for the stickers and puzzles and thought the book was fun and easy to understand. These responses are evidence that the goals of the activity book have been met.

According to the study, respondents distributed the book to children involved with criminal courts (10 percent), family court (48 percent), and juvenile court (46 percent). Some respondents gave the book to children in more than one type of court. The study showed that children who received the book were present in court for the following reasons: (1) They were dependents; (2) they were children of divorcing parents; (3) they were children of employees; (4) they were children of parents on probation; (5) they were appearing in delinquency court; (6) they were victims or witnesses in a case; (7) they were accompanying their parents who were victims or witnesses. These responses reflect the wide range

of circumstances in which children encounter the court system.

The age ranges of the children who received the activity book varied. According to survey results, 29 percent of respondents distributed the book to children ages 0-5, 76 percent of respondents distributed the book to children ages 5-7, 88 percent of respondents distributed the book to children ages 7-10, 71 percent of respondents distributed the book to children ages 10-12, and 45 percent of respondents distributed the book to children 13 and older. Some children were old enough to read and learn from the book with no assistance. Other children needed an adult to read the book to them or assist them with the activities.

The activity book discusses many different court situations and court rules, and 92 percent of respondents felt that the book addressed common questions that children have about court. In a child-friendly manner, the activity book explains the types of professionals that children will encounter as well as the types of court processes. The court activity books have touched the lives of many children coming before California's courts.

**If you are interested in receiving copies of *What's Happening in Court?* please contact CFCC at 415-865-7739 or [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov).**

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